

7:00 PM

Aldermanic Chamber

1. ROLL CALL
2. PUBLIC COMMENT
3. COMMUNICATIONS

From: Mayor Jim Donchess

Re: Authorization of Emergency Purchase Order – Emergency Landfill Repair Project Engineering Services

From: Mayor Jim Donchess

Re: Authorization of Emergency Purchase Order – Emergency Landfill Repair Project with Charter Contracting

From: Amy Girard, Purchasing Manager

Re: Motorola Service & System Upgrade Agreement in the amount not to exceed \$318,732.35 funded from General Fund/ 54- Property Services

From: Amy Girard, Purchasing Manager

Re: Amendment for Parking pay stations FWO & PartSmart in the amount not to exceed \$31,392 funded from General Fund/ 55- Other Services

From: Amy Girard, Purchasing Manager

Re: Amendment #2 for OPM Services for Parking Garage Repair in the amount not to exceed \$117,455.30 funded from Bond/ 53- Professional & Technical Services

From: Amy Girard, Purchasing Manager

Re: Amendment #3 for the parking garage office design in the amount not to exceed \$42,425 funded from Bond/ 53- Professional & Technical Services

From: Amy Girard, Purchasing Manager

Re: Parking Garage Repair Construction Management Amendment #3 in the amount not to exceed \$2,300,320 funded from Bond/ 81- Capital Outlay/Improvements

From: Amy Girard, Purchasing Manager

Re: Software Subscription: Vector Solutions LMS in the amount not to exceed \$79,546.29 funded from General Fund/ 54- Property Services

From: Amy Girard, Purchasing Manager

Re: Collection System Flow Monitoring in the amount not to exceed \$329,500 funded from Wastewater Fund/ 55- Other Services

From: Amy Girard, Purchasing Manager

Re: Long-Term Management of Biosolids FY26 Amendment #2 in the amount not to exceed \$60,000 funded from Wastewater Fund/ 54- Property Services

From: Amy Girard, Purchasing Manager

Re: FY27 DPW Facilities Cleaning Services in the amount not to exceed \$90,000 funded from General Fund/ Wastewater Fund/ 54- Property Services

From: Amy Girard, Purchasing Manager

Re: 2026 Paving Contract 2 Change Order #2 in the amount not to exceed \$630,000 funded from Bond/

54- Property Services

From: Amy Girard, Purchasing Manager
Re: 2026 Sewer & Drainage Rehabilitation in the amount not to exceed \$749,395 funded from Bond/ 81- Capital Outlay/Improvements

From: Amy Girard, Purchasing Manager
Re: 2026 Sewer & Drainage Rehabilitation Amendment #1 in the amount not to exceed \$388,000 funded from Bond/ 53- Professional & Technical Services

From: Amy Girard, Purchasing Manager
Re: 2025 CIPP Main Lining Construction Administration Amendment 1 in the amount not to exceed \$118,935.50 funded from Bond/ 81- Capital Outlay/Improvements

From: Amy Girard, Purchasing Manager
Re: 2026 MS4 Permit Assistance in the amount not to exceed \$149,156 funded from Wastewater Fund/ 81- Capital Outlay/Improvements

4. NEW BUSINESS – RESOLUTIONS

R-26-047

Endorsers: Mayor Jim Donchess
Alderman Patricia Klee
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman-at-Large Alicia Gregg
Alderman Richard A. Dowd
Alderman-at-Large Amber Morgan
Alderman-at-Large Lori Wilshire

AUTHORIZING AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT AND FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT WITH LANSING MELBOURNE GROUP, LLC REGARDING “NIMCO” SITE

5. NEW BUSINESS – ORDINANCES
6. TABLED IN COMMITTEE
7. RECORD OF EXPENDITURES
8. GENERAL DISCUSSION
9. PUBLIC COMMENT
10. REMARKS BY THE ALDERMEN
11. ADJOURNMENT

Jim Donchess

Mayor • City of Nashua

To: Finance Committee

From: Mayor Jim Donchess

Date: June 18, 2026

Re: Authorization of Emergency Purchase Order – Emergency Landfill Repair Project Engineering Services

Pursuant to NRO : § 5-90 G. The Mayor may determine that an immediate contract award is necessary to protect the public health or safety or to avoid substantial financial loss to the City and that the circumstances do not permit the convening of a special meeting of the Finance Committee or the Board of Aldermen in time to deal with the emergency.

An emergency authorization has been granted for Sanborn Head & Associates, Inc. to provide engineering services for the Four Hills Landfill. These services are necessary to investigate and address a suspected leachate discharge associated with the Phase III temporary cap system. The leachate is no longer being contained within the liner system, resulting in non-compliance with DES. Preliminary observations indicate that a weld connecting the temporary cap geomembrane to the primary liner system has failed.

Sanborn, Head & Associates will investigate the leak and create construction level drawings for the contractor. They will also provide assistance related to environmental compliance matters.

Due to the urgent nature of the situation and the need to prevent further impact, an emergency purchase order is authorized to Sanborn, Head & Associates for \$105,700.

Thank you.



CONTRACT FOR PROFESSIONAL SERVICES

2026 EMERGENCY LANDFILL REPAIR PROJECT ENGINEERING SERVICES

A CONTRACT BETWEEN

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

SANBORN, HEAD & ASSOCIATES, INC.
and its successors, transferees and assignees (together "Professional Engineer")

NAME AND TITLE OF PROFESSIONAL ENGINEER

6 Bedford Farms Drive, Suite 201, Bedford, NH 03110

ADDRESS OF PROFESSIONAL ENGINEER

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

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

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

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

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A - General Conditions for Contracts
Exhibit B - Scope of Services

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

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

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

DESCRIPTION OF WORK:

Provide emergency engineering, repair design, construction oversight, environmental sampling, and regulatory reporting to address a suspected leachate discharge caused by failure of the Phase III temporary landfill cap as outlined in **Exhibit B**.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work by **August 17, 2026** 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. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

4. COMPENSATION. Professional Engineer agrees to perform the work for a total cost not to exceed

ONE HUNDRED FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$ 105,700)

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

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

- Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Professional Engineer agrees to provide the following with each request for payment:

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

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

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

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

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

CITY OF NASHUA REPRESENTATIVE:

Jeff Lafleur, Superintendent
City of Nashua, Solid Waste Department
848 West Hollis Street
Nashua, NH 03062

REPRESENTATIVE:

Eric S. Steinhauser, P.E., CPESC, CPSWQ
Sanborn, Head & Associates
6 Bedford Farms Drive, Suite 201
Bedford, NH 03110

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

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


CITY OF NASHUA, NH (signature)

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

6/18/26
Date


SANBORN HEAD AND ASSOCIATES
(signature)

Eric S. Steinhauser, Senior Vice President and Principal
(Printed Name and Title)

June 17, 2026
Date

EXHIBIT A

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General Terms and Conditions

1. **Definitions.** Unless otherwise required by the context, "Professional Engineer", and its successors, transferees and assignees (together "Professional Engineer") includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors
2. **Professional Engineer Status.** The parties agree that Professional Engineer shall have the status of and shall perform all work under this contract as a Professional Engineer, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Professional Engineer, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Engineer's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Engineer is not a City of Nashua employee and that there shall be no:
 - (1) Withholding of income taxes by the City of Nashua;
 - (2) Industrial insurance coverage provided by the City of Nashua;
 - (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
 - (4) Participation or contributions by either the Professional Engineer or the City of Nashua to the public employee's retirement system;
 - (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
 - (6) Unemployment compensation coverage provided by the City of Nashua.
3. **Standard of Care.** Professional Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. The standard of care of the Professional Engineer's is the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Engineer to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key

personnel shall not be taken off of the project by Professional Engineer without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. **City of Nashua Representative.** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.
5. **Changes to Scope of Work.** The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Engineer of the change.

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

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

6. **CITY OF NASHUA COOPERATION.** The City of Nashua agrees that its personnel will cooperate with Professional Engineer in the performance of its work under this contract and that such personnel will be available to Professional Engineer for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City of Nashua also agrees to provide Professional Engineer with access to City of Nashua records in a reasonable time and manner and to schedule items

that require action by the Board of Public Works and Finance Committee in a timely manner. The City of Nashua and Professional Engineer also agree to attend all meetings called by the City of Nashua or Professional Engineer to discuss the work under the Contract, and that Professional Engineer may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

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

8. Termination of Contract

A. Termination, Abandonment, or Suspension at Will. The City of Nashua, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City of Nashua chooses to terminate, abandon, or suspend all or part of the project, it shall provide Professional Engineer 10 day's written notice of its intent to do so.

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

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

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

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

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

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

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

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

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

C. General Provisions for Termination. Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

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

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

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

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;

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

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

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

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

12. Indemnification. Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and hold harmless the City of Nashua, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or

nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Professional Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the negligence or willful misconduct of the party indemnified or held harmless.

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

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

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

- 15. Compliance with Applicable Laws.** Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans with Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

- 16. Nondiscrimination.** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment,

upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

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

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

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

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

- 17. Endorsement.** Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.
- 18. Assignment, Transfer, Delegation, or Subcontracting.** Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
- 19. City Inspection of Contract Materials.** The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable,

the Comptroller General of the United States, or any authorized representative of those entities.

- 20. Disposition of Contract Materials.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua.

The City of Nashua acknowledges that the Professional Engineer's Instruments of Service are not represented to be suitable for use or reuse for any other applications or site without written verification from the Professional Engineer and any such use or reuse without written verification from the Professional Engineer will be at the City of Nashua's sole risk and without liability to the Professional Engineer.

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

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

Professional Engineer expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City of Nashua or any of its officers or employees, in either their official or individual capacity of the City of Nashua,

for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Professional Engineer agrees to indemnify, to defend, and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

- 22. Final Acceptance.** Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.
- 23. Taxes.** Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
- 24. Non-Waiver of Terms and Conditions.** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.
- 25. Rights and Remedies.** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 26. Prohibited Interests.** Professional Engineer shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or the proceeds of this contract. Professional Engineer represents that no officer or employee of the City of Nashua has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Professional Engineer. If any such

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

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

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

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

- 27. Third Party Interests and Liabilities.** The City of Nashua and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Engineer.
- 28. Survival of Rights and Obligations.** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.
- 29. Severability.** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or

unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

- 30. Modification of Contract and Entire Agreement.** This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.
- 31. Choice of Law and Venue.** This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in 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.
- 32. Reliance on Representations.** Professional Engineer acknowledges that the City of Nashua will be relying, and shall be entitled to rely, on the representations, undertakings and acknowledgments of Professional Engineer as set forth in this contract. Professional Engineer agrees to notify the City of Nashua promptly if any of its representations, undertakings, or acknowledgments set forth in this contract ceases to be true. Each of the parties represents to the other party that it has full authority to enter into this contract upon the terms and conditions hereof and that the individual executing this contract on its behalf has the requisite authority to bind such party to this contract.

Darrin Santos, PG
Environmental Engineer
Nashua Division of Public Works, Solid Waste Department
848 West Hollis Street
Nashua, NH 03062

June 17, 2026
File No. 3066.263

Sent via email

Re: Proposal for Engineering Support
Phase III Temporary Cap Response Actions
Nashua Four Hills Secure Landfill Expansion, Nashua, New Hampshire
NHDES Permit No. DES-SW-SP-95-002

Dear Darrin:

On June 10, 2026, Sanborn, Head & Associates, Inc. (Sanborn Head) was informed by the City of Nashua (City) of a suspected leachate discharge associated with the Phase III temporary cap at the Nashua Four Hills Secure Landfill Expansion in Nashua, New Hampshire. It is suspected that a weld between the temporary cap geomembrane and the primary liner geomembrane failed.

This proposal outlines our anticipated engineering services and fee to support the City in responding to the suspected leachate discharge. Our anticipated services include the following:

- Site visits by Sanborn Head personnel to observe the area of the suspected leak. An initial site visit was held on June 10, 2026. A second visit was held on June 11, 2026, when a representative of the New Hampshire Department of Environmental Services (NHDES) visited the site.
- Engineering to prepare construction-level drawings for the proposed repair. Based on observations made during the aforementioned site visits and a review of record drawings for Phase III, the proposed repair is expected to consist of the following:
 - Pulling back the existing rain flap portion of the temporary cap;
 - Uncovering and exposing the Phase III anchor trench to uncover the weld between the temporary cap and the primary liner geomembranes;
 - Constructing a concrete block wall beyond the anchor trench, which will be backfilled with low-permeability soil on the landfill side and riprap on the opposite side;
 - Extending both the secondary and primary liner geosynthetics over the top of the concrete block wall; and
 - Extending the temporary cap geomembrane and welding it to the extended primary liner geomembrane.
- Construction quality assurance (CQA) services to document construction of the proposed repair, including preparation of a CQA Report.
- Preparation of an after-the-fact Type II permit modification application.

Additionally, Sanborn Head will provide support services related to environmental compliance matters. We anticipate collecting the following samples:

- Four stormwater samples from within the stormwater swale network adjacent to/downgradient of the apparent discharge area;
- Four groundwater samples from monitoring wells proximate to the apparent discharge area; and
- Three co-located sediment and soil samples (i.e., six solid media samples) in the vicinity of the apparent discharge area.

For budgeting purposes, we assume that the above samples will be analyzed for the same parameters as have been previously required by the NHDES following similar discharge incidents. We understand that Haley Ward, as consultant to the City, may also collect groundwater samples in this vicinity, and Sanborn Head will incorporate data collected by Haley Ward into existing project databases and the overall conceptual site model.

Pursuant to Env-Or 605.06, Sanborn Head will support the City in preparation of an Initial Response Action (IRA) report within 30 days of the City's initial response actions. Given this short reporting timeframe, and based on previous experience with similar incidents, we anticipate preparing a separate addendum to the IRA report, following receipt of the laboratory analytical results of the above-described samples.

The following table summarizes the estimated fee for the proposed services. We will invoice based on actual accrued time and expenses in accordance with the Schedule of Fees included with our multi-year agreement in place with the City. We will not perform services beyond those defined herein without first receiving authorization from the City.

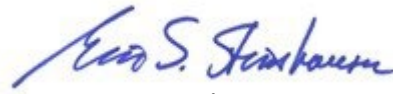
Task	Labor	Laboratory	Expenses	Fee
Site Visits	\$4,600	\$0	\$100	\$4,700
Engineering Design	\$7,500	\$0	\$0	\$7,500
CQA Services and CQA Report	\$52,000	\$0	\$1,300	\$53,300
After-the-fact Type III PMA	\$9,000	\$0	\$600	\$9,600
Environmental Sampling	\$9,000	\$11,000	\$600	\$20,600
IRA Reporting	\$10,000	\$0	\$0	\$10,000
Total	\$92,100	\$11,000	\$2,600	\$105,700

It is our understanding that the City will issue a Purchase Order for the services and fee described herein.

Thank you for the opportunity to be of service to the City. We look forward to assisting the City on this project. Please contact us should you require additional information.

Very truly yours,
SANBORN, HEAD & ASSOCIATES, INC.


Ryan L. Clay, PE
Project Manager


Eric S. Steinhauser, PE, CPESC, CPSWQ
Senior Vice President and Principal

RLC/ESS:ess

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/10/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Ins Center 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	CONTACT NAME: Greyling COI Specialist PHONE (A/C, No, Ext): 770.756.6599 E-MAIL ADDRESS: greylingcerts@greyling.com	FAX (A/C, No): 770.756.6599
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Allied World Assurance Co (U.S.) Inc.		19489
INSURER B : Sentinel Insurance Company, Ltd.		11000
INSURER C : Allied World Surplus Lines Insurance Co		24319
INSURER D : Hartford Accident and Indemnity Company		22357
INSURER E :		
INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 1028398350**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			03129204	6/12/2025	6/12/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
D	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			20UEGIB8152	6/12/2025	6/12/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			03129206	6/12/2025	6/12/2026	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N	N / A	20WEGAS1K41	6/12/2025	6/12/2026	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability including Pollution			03129184	6/12/2025	6/12/2026	Per Claim Aggregate \$2,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: 6822.000

City of Nashua are named as Additional Insureds with respects to General & Automobile Liability where required by written contract.

CERTIFICATE HOLDER**CANCELLATION**City of Nashua
848 West Hollis Street
Nashua NH 03062

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

AUTHORIZED REPRESENTATIVE

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Jim Donchess

Mayor • City of Nashua

To: Finance Committee

From: Mayor Jim Donchess

Date: June 18, 2026

Re: Authorization of Emergency Purchase Order – Emergency Landfill Repair Project with Charter Contracting

Pursuant to NRO : § 5-90 G. The Mayor may determine that an immediate contract award is necessary to protect the public health or safety or to avoid substantial financial loss to the City and that the circumstances do not permit the convening of a special meeting of the Finance Committee or the Board of Aldermen in time to deal with the emergency.

An emergency authorization has been granted for Charter Contracting to provide repair services for the Four Hills Landfill. These services are necessary to address a suspected leachate discharge associated with the Phase III temporary cap system. The leachate is no longer being contained within the liner system, resulting in non-compliance with DES.

Charter Contracting will make the necessary repairs cap repairs.

Due to the urgent nature of the situation and the need to prevent further impact, an emergency purchase order is authorized to Charter Contracting for \$128,042.08.

Thank you.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the 18 day of June in the year 2026 by and between the City of Nashua, New Hampshire (hereinafter called OWNER) and Charter Contracting Company, LLC and its successors, transferees and assignees together hereinafter called CONTRACTOR).

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

ARTICLE 1 - WORK

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

ARTICLE 2 - THE PROJECT

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

There were heavy rains received at the Nashua Four Hills Landfill. The rain caused damage to a section of the temporary cap liner on the landfill. The City of Nashua requested Charter fix the damages. The current scope of work is unknown. The anticipated scope of work includes:

- Mobilize equipment and manpower to the site to perform the work
- Excavate riprap and haul material via an articulating dump truck to the working face of the landfill. Dumping location to be determined by the City of Nashua
- Pull back rain flap to expose screened till wedge
- Excavate screened till wedge and haul material via an articulating dump truck to the working face of the landfill. Dumping location to be determined by the City of Nashua
- Expose the top of the anchor trench
- Cut hole in temporary 40-mil HDPE cap to expose area beneath temporary cap
- Excavate cover soil and waste to an elevation lower than the top of the anchor trench and haul to the active face. Dumping location to be determined by the City of Nashua
- Transport and Install concrete bin blocks
- Repair/Extend Base Liner per new detail
- Install HDPE piping as required and provided by City of Nashua to contain stormwater. HDPE Pipe is to be provided by the City of Nashua.
- Furnish and install crushed stone as needed around new pipes or to backfill area.
- Repair temporary cap including boot system around the newly installed sump pipe. Repair work to include new 40-mil liner as needed. Liner subcontractor to perform the work.
- Furnish and install new screened till to create the screened till wedge on top of temporary cap, underneath rain flap.
- Install new 10-oz. non-woven geotextile as needed
- Furnish and install new riprap to restore area to previous condition.
- Demobilize manpower and equipment.
- Charter reserves the right to reprice if work takes longer than anticipated due to the repair work being more extensive than assumed.

ARTICLE 3 - ENGINEER

3.01 Sanborn, Head & Associates
6 Bedford Farms Drive, Suite 201
Bedford, NH 03110

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Substantial Completion and Final Payment*

<u>July 17 2026</u>	for substantial completion
<u>August 17, 2026</u>	for contract completion

Substantial completion is defined in Section 1.01 of the General Terms and Conditions.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER FIVE HUNDRED dollars (\$500) for each calendar day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER FIVE HUNDRED dollars (\$500) for each calendar day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

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

ARTICLE 5 - CONTRACT PRICE

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

ONE HUNDRED TWENTY-EIGHT THOUSAND FORTY-TWO AND 08/00 DOLLARS

(\$128,042.08)

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

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

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

- Electronically via email to 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.

6.02 *Progress Payments; Retainage*

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

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

1. The OWNER will establish an escrow account in the bank of the OWNER'S choosing. The account will be established such that interest on the principal will be paid to the CONTRACTOR. The principal will be the accumulated retainage paid into the account by the OWNER. The principal will be held by the bank, available only to the OWNER, until termination of the contract.
2. Until the work is 50% complete, as determined by the ENGINEER, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.
3. After the work is 50% complete, and provided the CONTRACTOR has satisfied the ENGINEER in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.

6.03 *Final Payment*

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

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

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

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all (if any): (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

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

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions

(surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

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

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

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

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

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

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

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

- I. This Agreement signed by the **OWNER** and **CONTRACTOR**, including the General Terms and Conditions;
- II. Scope of Work – attached as Exhibit B;
- III. Payment and Performance Bonds;
- IV. Insurance Certificate;
- V. Fully Executed OWNER Purchase Order

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

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

9.02. *Assignment of Contract*

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

9.03 *Successors and Assigns*

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

9.04 *Severability*

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

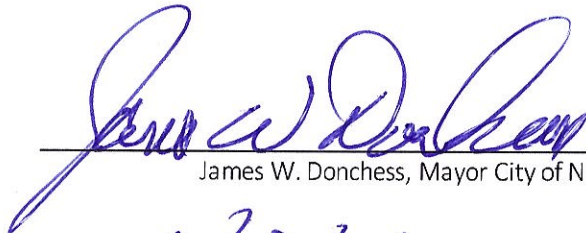
9.05 *Choice of Law and Venue*

A. This agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

<u>Address for Giving Notices to Owner:</u>	<u>Address for Giving Notices to Contractor:</u>
Darrin Santos, Environmental Engineer	Matt Wilder
Division of Public Works	Charter Contracting Company, LLC
Solid Waste Department	500 Harrison Avenue
848 West Hollis Street	Boston, MA 02118
Nashua, NH 03062	Email: mwilder@charter.us
Email: santosd@NashuaNH.gov	

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

CITY OF NASHUA – OWNER:


James W. Donchess, Mayor City of Nashua

Date: 

CONTRACTOR:

By: 
Charter Contracting Company, LLC (Authorized Representative)

Print Name: Robert Callahan, Jr. President and CFO

Date: June 17, 2026



2026 Emergency Landfill Repair Project

Date: 6/17/2026

Client: City of Nashua, NH

Engineer: Sanborn Head & Associates

Project Title: 2026 Emergency Landfill Repair Project

Description of Project:

There were heavy rains received at the Nashua Four Hills Landfill. The rain caused damage to a section of the temporary cap liner on the landfill. The City of Nashua requested Charter fix the damages. The current scope of work is unknown. The anticipated scope of work includes:

- Mobilize equipment and manpower to the site to perform the work
- Excavate riprap and haul material via an articulating dump truck to the working face of the landfill. Dumping location to be determined by the City of Nashua
- Pull back rain flap to expose screened till wedge
- Excavate screened till wedge and haul material via an articulating dump truck to the working face of the landfill. Dumping location to be determined by the City of Nashua
- Expose the top of the anchor trench
- Cut hole in temporary 40-mil HDPE cap to expose area beneath temporary cap
- Excavate cover soil and waste to an elevation lower than the top of the anchor trench and haul to the active face. Dumping location to be determined by the City of Nashua
- Transport and Install concrete bin blocks
- Repair/Extend Base Liner per new detail
- Install HDPE piping as required and provided by City of Nashua to contain stormwater. HDPE Pipe is to be provided by the City of Nashua.
- Furnish and install crushed stone as needed around new pipes or to backfill area.
- Repair temporary cap including boot system around the newly installed sump pipe. Repair work to include new 40-mil liner as needed. Liner subcontractor to perform the work.
- Furnish and install new screened till to create the screened till wedge on top of temporary cap, underneath rain flap.
- Install new 10-oz. non-woven geotextile as needed
- Furnish and install new riprap to restore area to previous condition.
- Demobilize manpower and equipment.
- Charter reserves the right to reprice if work takes longer than anticipated due to the repair work being more extensive than assumed.

Reason for Project:

The City of Nashua requested Charter perform landfill repairs which is outside the original prior scope of work. Charter has made assumptions based on the anticipated time and materials needed to perform the repairs. Invoicing will be based on the actual time and materials needed to perform the repairs.



Rate/Pricing:

<u>Description</u>	<u>Total Price</u>
Emergency Cap Repairs	\$128,042.08

Please contact me at 857-337-0490 or msherman@charter.us if there are any questions.

Sincerely,

Charter Contracting Company, LLC

A handwritten signature in black ink that reads "Maxwell Sherman". The signature is written in a cursive, flowing style.

Maxwell Sherman, Project Manager



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-001

TO: Mayor Donchess
Finance Committee

SUBJECT: Motorola Service & System Upgrade Agreement in the amount not to exceed
\$318,732.35 funded from General Fund/ 54- Property Services

Please see attached communications from William Mansfield, Radio Systems Manager, dated June 11, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Motorola system upgrade and additional services including: security upgrade services and remote security upgrade services, preventive maintenance and ASTRO technical support

Value: \$318,732.35

Department: 157 Citywide Communications

Vendor: Motorola Solutions Inc.

Fund: General Fund/ 54-Property Services

Ordinance: Pursuant to § 5-84 Special purchase procedures. A/(4) Sole-source procurements, where the proposed purchase is manufactured by only one company or where a sole company's product offers proprietary features or technology necessary for the City's requirements.

Citywide Communications, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: W Mansfield
D Enwright
T Cummings



City of Nashua, NH Citywide Communications Department

June 11, 2026

To: Amy Girard, Purchasing Manager

From: William Mansfield, Radio Systems Manager

RE: Motorola Service & System Upgrade Agreements

Dear Ms. Girard,

Attached are copies of the Motorola Service Agreement and the System Upgrade Agreement (SUA II), totaling \$318,732.35. Both contracts have been reviewed, modified, and approved by the Legal Department.

System Upgrade Agreement II

The City of Nashua plans to upgrade its radio system every two years to keep pace with the latest hardware, software, and security features, helping prevent major failures. Given the rapid pace of technological change and ongoing cybersecurity concerns, these biennial upgrades are essential to mitigate the risk of system failure. This payment is the first half of a two-year SUA II, with this year's installment totaling \$267,507.53. The upgrade is scheduled for May 2027.

In addition to the System Upgrade Agreement, the Communications Department is requesting the purchase of the following services to help maintain the radio system.

Security Upgrade Services and Remote Security Upgrade Services ***\$30,933.46***

This service provides the City with the software needed to upgrade our system security on a monthly basis. The City receives a notification when an upgrade is available; it is then accepted, and our employees install the upgrade on the required equipment.

Preventive Maintenance ***\$4,532.08***

This service includes a Motorola System Technologist and Two Way Communications from the Local Radio Shop, who respond to the City annually and perform preventive maintenance on the system. The City's Communications Division lacks the equipment needed to conduct functionality testing on our system. Acquiring this equipment would be costly for the City and would require significant additional training. It is more cost-effective to rely on personnel who have both the equipment and the training to perform this function.

ASTRO Technical Support ***\$15,759.28***

This service enables the Citywide Communications Staff to contact Motorola Solutions experts in Elgin, IL, for assistance with troubleshooting issues with the radio system.

Pursuant to NRO Sec 5-84 (A)(4), special purchasing procedures for sole-source procurements, quotations dated March 4, 2026, were solicited from Motorola Solutions Inc. for maintenance services and the System Upgrade Agreement (SUA II) totaling \$318,732.35. Funding for these services is available in the FY 27 Citywide Communications Budget, Communications Equipment Maintenance, Account #57. 1. 620 54435.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wmansfield". The signature is fluid and cursive, with the first name "William" and last name "Mansfield" clearly distinguishable.

William Mansfield
Radio Systems Manager
City of Nashua



MOTOROLA SOLUTIONS

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530260
Contract Number: USC000044501
Contract Modifier: R02-MAR-26 07:11:19

Date:03/04/2026

Company Name: NASHUA POLICE DEPT, CITY OF

Attn:

Billing Address: PO BOX 785/CITYWIDE COMMS COMM

City, State, Zip: NASHUA , NH, 03061

Customer Contact:

Phone:

Required P.O. :

PO # :

Customer # :1000413138

Bill to Tag # :

Contract Start Date :01-Jul-2026

Contract End Date :30-Jun-2027

Payment Cycle :ANNUALLY

Qty	Service Name	Service Description	Extended Amt
	SVC02SVC0201A	ASTRO SUA II UO IMPLEMENTATION SERVICES	\$61,024.36
	SVC02SVC0344A	RELEASE IMPLEMENTATION TRAINING	\$0.00
	SVC02SVC0343A	RELEASE IMPACT TRAINING	\$0.00
	SVC04SVC0169A	SYSTEM UPGRADE AGREEMENT II	\$163,185.85
	SVC02SVC0433A	ASTRO SUA II FIELD IMPLEMENTATN SVC	\$43,297.32
		Subtotal - Recurring Services	\$22,292.29
			\$267,507.53
		Subtotal - One-Time Event Services	\$0.00
			\$0.00
		Total	\$267,507.53
		THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA	

SPECIAL INSTRUCTIONS:

I have received Applicable Statements of Work which describe the Services provided on this Agreement. Motorola's Terms and Conditions are attached hereto and incorporated herein by reference. By signing below, Customer acknowledges these terms and conditions govern all Services under this Agreement.

AUTHORIZED CUSTOMER SIGNATURE

TITLE

DATE

CUSTOMER (PRINT NAME)



MOTOROLA SOLUTIONS

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530260
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Contract Modifier: R02-MAR-26 07:11:19

MOTOROLA REPRESENTATIVE(SIGNATURE)

TITLE

DATE

MOTOROLA REPRESENTATIVE(PRINT NAME)

PHONE

Company Name : NASHUA POLICE DEPT, CITY OF
Contract Number : USC000044501
Contract Modifier : R02-MAR-26 07:11:19
Contract Start Date : 01-Jul-2026
Contract End Date : 30-Jun-2027



500 W Monroe Street
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SERVICE AGREEMENT

Quote Number : QUOTE-3530260
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Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY

1.1 These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

5.3 This Agreement pricing provided does not take into account prevailing wage requirement. Should prevailing wage regulations be applicable to this project, the pricing shall be subject to change to reflect compliance with those regulations.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7. CUSTOMER CONTACT



MOTOROLA SOLUTIONS

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530260
Contract Number: USC000044501
Contract Modifier: R02-MAR-26 07:11:19

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date.

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

Quote Number : QUOTE-3530260
Contract Number: USC000044501
Contract Modifier: R02-MAR-26 07:11:19

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. SOFTWARE, SUA, VIDEO AND SUBSCRIPTION SERVICES

All software, SUA, video and subscription services provided by Motorola are governed by the Motorola Solutions Customer Agreement available at: https://www.motorolasolutions.com/en_us/about/legal/communications_terms.html.

Section 18. GENERAL TERMS

18.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

18.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

18.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

18.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

18.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

18.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

18.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

18.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

18.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised July 2, 2025



MOTOROLA SOLUTIONS

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530159
Contract Number: USC000005299
Contract Modifier: R02-MAR-26 06:21:41

Date:03/04/2026

Company Name: NASHUA POLICE DEPT, CITY OF

Attn:

Billing Address: PO BOX 785/CITYWIDE COMMS COMM

City, State, Zip: NASHUA , NH, 03061

Customer Contact:

Phone:

Required P.O. :

PO # :

Customer # :1000413138

Bill to Tag # :

Contract Start Date :01-Jul-2026

Contract End Date :30-Jun-2027

Payment Cycle :ANNUALLY

Qty	Service Name	Service Description	Extended Amt
	SVC01SVC0335A	NETWORK PREVENTIVE MAINT-LEVEL 1	\$4,532.08
	SVC01SVC1104C	ASTRO TECHNICAL SUPPORT	\$15,759.28
	SVC04SVC0016C	SUS	\$10,242.85
	SVC01SVC0140A	REMOTE SUS	\$20,690.61
		Subtotal - Recurring Services	\$4,268.74
			\$51,224.82
		Subtotal - One-Time Event Services	\$0.00
			\$0.00
		Total	\$51,224.82
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA			

SPECIAL INSTRUCTIONS:

I have received Applicable Statements of Work which describe the Services provided on this Agreement. Motorola's Terms and Conditions are attached hereto and incorporated herein by reference. By signing below, Customer acknowledges these terms and conditions govern all Services under this Agreement.

AUTHORIZED CUSTOMER SIGNATURE

TITLE

DATE

CUSTOMER (PRINT NAME)



MOTOROLA SOLUTIONS

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530159
Contract Number: USC000005299
Contract Modifier: R02-MAR-26 06:21:41

MOTOROLA REPRESENTATIVE(SIGNATURE)

TITLE

DATE

MOTOROLA REPRESENTATIVE(PRINT NAME)

PHONE

Company Name : NASHUA POLICE DEPT, CITY OF
Contract Number : USC000005299
Contract Modifier : R02-MAR-26 06:21:41
Contract Start Date : 01-Jul-2026
Contract End Date : 30-Jun-2027



500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

SERVICE AGREEMENT

Quote Number : QUOTE-3530159
Contract Number: USC000005299
Contract Modifier: R02-MAR-26 06:21:41

Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY

1.1 These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

5.3 This Agreement pricing provided does not take into account prevailing wage requirement. Should prevailing wage regulations be applicable to this project, the pricing shall be subject to change to reflect compliance with those regulations.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7. CUSTOMER CONTACT



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL 60661
(888) 325-9336

Quote Number : QUOTE-3530159
Contract Number: USC000005299
Contract Modifier: R02-MAR-26 06:21:41

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date.

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.



SERVICE AGREEMENT

500 W Monroe Street
Chicago, IL. 60661
(888) 325-9336

Quote Number : QUOTE-3530159
Contract Number: USC000005299
Contract Modifier: R02-MAR-26 06:21:41

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. SOFTWARE, SUA, VIDEO AND SUBSCRIPTION SERVICES

All software, SUA, video and subscription services provided by Motorola are governed by the Motorola Solutions Customer Agreement available at: https://www.motorolasolutions.com/en_us/about/legal/communications_terms.html.

Section 18. GENERAL TERMS

18.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

18.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

18.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

18.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

18.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

18.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

18.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

18.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

18.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised July 2, 2025



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-002

TO: Mayor Donchess
Finance Committee

SUBJECT: Amendment for Parking pay stations FWO & PartSmart in the amount not to exceed
\$31,392 funded from General Fund/ 55- Other Services

Please see attached communications from Jill Stansfield, Parking Manager, dated July 1, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment for wireless data connectivity, system support and warranty coverage
for parking pay stations
Value: \$31,392
Department: 166 Parking
Vendor: Cale America, Inc.
Fund: General Fund/ 55-Other Services

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to
its scope of work or so as to increase sums payable to the contractor, without
Finance Committee approval for amendment amounts exceed \$25,000; and
without the Board of Aldermen amounts exceeding \$1,000,000 .

Economic Division: Parking Department, and the Purchasing Department respectfully requests your
approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: J Stansfield
D Enwright
T Cummings



THE CITY OF NASHUA

*Economic Development Division – Parking Department
Office of the Mayor*

"The Gate City"

TO: Amy Girard, Purchasing Manager

FROM: Jill Stansfield, Parking Manager

DATE: July 1, 2026

SUBJECT: FY27 Cale America, Inc. Contract (Value: \$31,392)
Department: 166 Parking

The Parking Department is requesting approval to contract with Cale America, Inc., (Flowbird) of Clearwater, Florida. The contract will provide the required wireless data connectivity, system support, and warranty coverage for all parking pay stations utilized by the Parking Department. This includes all on-street pay stations as well as those located in municipal parking lots and parking garages.

The contract period will cover Fiscal Year 2027, from July 1, 2026, through June 30, 2027. Flowbird is a reputable and responsible company that the City of Nashua has worked with since 2012. The company has consistently provided reliable service, technical support, software connectivity, and equipment warranty coverage necessary for the continued operation of the City's parking payment system.

For FY27, Cale America, Inc., (Flowbird) has agreed to maintain the same pricing as FY26 for both pay station data services and the warranty program, resulting in no increase to the unit cost of these services. The increase in the total contract amount is attributable to the addition of new pay stations over the past year and the inclusion of the School Street Garage pay stations, which were previously covered under their initial no-cost warranty period as part of the original equipment purchase. As a result, the annual agreement now exceeds the City's \$25,000 approval threshold and is being presented to the Finance Committee for authorization.

Approval of this request will ensure uninterrupted operation of the City's pay station network and continued support of parking payment operations throughout the City's parking system.

Funding for this contract is available within the Parking Department's FY27 operating budget.

Thank You.

Addendum – Contract Extension

Date: July 1, 2026

Contract Description: Pay Station Provider Agreement

Using Governmental Unit: City of Nashua

Offeror's Name and Address: Cale America, Inc. - 13190 56th Court, Suite 401, Clearwater, FL 33760

THIS CONTRACT RENEWAL is entered into by and between the CITY OF NASHUA (CITY), a municipal corporation and CALE AMERICA, INC. (CONTRACTOR), as follows

WHEREAS, the CITY and CONTRACTOR entered into an AGREEMENT for Multi Space Parking Meters

WHEREAS, the terms and conditions of the AGREEMENT provide one (1) additional one-year renewal options; and

WHEREAS, renewal of the AGREEMENT is in the best interest of the City; NOW THEREFORE, be it agreed by and between the parties as follows:

The AGREEMENT RENEWAL term shall begin on July, 1 2026 and will expire on June 30, 2027.

All terms, conditions, and specifications of the original AGREEMENT shall remain the same.

City of Nashua

By _____ (Signature)

_____ (Type Name/Title Signed Above)

____ day of _____, 20____.

Cale America, Inc.

By _____ (Signature)

Benoit Reliquet, President North America

____ day of _____, 20____.

		City of Nashua 2026- 2027 FWO & PartSmart			
		Quote Date		6/17/26	
		Quote Expires		6/30/26	
		Quote Issued By		Natalie Snow	Mobile: 864-501-8836
					natalie.snow@flowbird.group
PartSmart					
Product Name	Quantity	Unit Price	Term	July 1 2026 - June 30 2027	
WebOffice - Pay and Display Maintenance alarms alerts to cell phone Reporting (standard) Credit Card Gateway Communication Fees 24/7 Support	14	\$ 51.75	Monthly	\$ 8,694.00	
WebOffice - Pay by Space Maintenance alarms alerts to cell phone Reporting (standard) Credit Card Gateway Communication Fees 24/7 Support	15	\$ 62.10	Monthly	\$ 11,178.00	
PartSmart - Pay Stations - Spring Lot 2 (#29) should be covered under existing warranty	28	\$ 20.00	Monthly	\$ 6,720.00	
School Street Garage Connected Devices includes: Maintenance alarms alerts to cell phone, Validations, Permits Pay Station Mapping (Google Maps) Reporting (standard and analytical) Credit Card Gateway Cellular Communication Fees Software Licensing and warranty	4	\$ 100.00	Monthly	\$ 4,800.00	
Annual Total: \$				31,392.00	
All prices stated are exclusive of taxes and shipping costs unless specifically itemized in this quotation. Customer is responsible for all taxes or providing proof of tax-exempt status. By accepting this order, Customer agrees to be bound by all applicable terms and conditions or terms of existing contract(s) between Customer and Flowbird for the same products and services, if any:					
Accepted by: _____ Date: ____/____/____					



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-003

TO: Mayor Donchess
Finance Committee

SUBJECT: Amendment #2 for OPM Services for Parking Garage Repair in the amount not to exceed \$117,455.30 funded from Bond/ 53- Professional & Technical Services

Please see attached communications from Tim Cummings, Director of Administrative Services,, dated June 23, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment #2 for oversight of phases 2 and 3 for the parking garage repairs
Value: \$117,455.30
To Date: \$192,083.29 Finance Memo# 26-042
Department: 129 City Buildings
Vendor: Greenman-Pedersen Inc.
Fund: Bond/ 53-Professional & Technical Services

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to its scope of work or so as to increase sums payable to the contractor, without Finance Committee approval for amendment amounts exceed \$25,000; and without the Board of Aldermen amounts exceeding \$1,000,000

Administrative Services Division: City Buildings, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Enwright
T Cummings



THE CITY OF NASHUA

Administrative Services

"The Gate City"

To: James Donchess, Mayor
From: T. Cummings, Director Administrative Services
Cc: Jill Stansfield Parking Manager
Liz Hannum, Director of Economic Development

Date: June 23, 2026

Re: Communication – Amendment of GPI contract for the Parking Garage Owner's Project Manager Contract

GPI has been the owner's project manager on the parking garage renovation project since February 2024. This amendment will allow them to continue oversight of the project on phases 2 and 3 until the project's completion.

A copy of the Professional Engineering Services Contract Amendment related to the Parking Garage Renovation Project Management Services with GPI is attached, including the scope and fee. The total figure for this effort is \$117,455.30. The source of funds is the Parking Garage Repair fund created to implement the project.

THANK YOU

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement is entered into as of this _ day of July, 2027, by and between **CITY OF NASHUA**, a municipality in the State of New Hampshire (hereinafter referred to as “City”), and **Greenman-Pedersen Inc (GPI)**, (hereinafter referred to as “Contractor”) whose address is 181 Ballardvale St Wilmington MA 01887.

WHEREAS, City and Contractor entered into that certain Professional Services related to the Parking Garage Office Expansion with GPI dated February 26, 2024 (the “Agreement”); and

WHEREAS, both City and Contractor desire to amend the Agreement to expand the scope of services and amend the budget.

NOW THEREFORE, the parties agree as follows:

1. Pursuant to Section 30 of the Agreement “Modification of Contract and Entire Agreement,” the Agreement is hereby amended to add the additional scope as attached with an internal budget of \$117,455.30 to P.O. # 185568 of GPI.
2. All other terms of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed, or have caused their properly authorized representatives to duly execute, this Second Amendment to Agreement on the date and year first above written.

City of Nashua

Greenman-Pedersen Inc

Date: -----

By: James Donchess, Mayor



Date-----06/22/2026-----

By: Tim Lemire

Authorization for Contract Amendment #2

Project:	Elm St and High St Parking Garage Rehabilitation	Amendment Contract Date:	June 4, 2026
Client:	City of Nashua, NH	Original Contract Date:	February 26, 2024
Contact:	Tim Cummings – Director of Administrative Services cummingst@nashua.gov	GPI Project No.	NEX-23000169.02
From:	Tim Lemire	Number of Pages	1

Greenman-Pedersen, Inc. (GPI) is pleased to provide this Contract Amendment for the following services:

Task 00001 OPM Services

In addition to GPI's work as described in the PROFESSIONAL SERVICES contract with the City of Nashua (PO 185568), GPI is proposing to add the following work elements to GPI's original scope of services:

- Construction phase OPM services for Phase 2: Elm St Parking Office Expansion
- Construction phase OPM services for Phase 3: Elm St & High St Façade Improvements
- Construction closeout: Phases 1, 2 & 3

Work elements will consist of contract administration, finance committee attendance, infrastructure committee updates as well as agenda development. All other services described in the November 8, 2023 scope of work remain in effect for the construction phase.

For budgeting purposes, it is estimated that services will continue through the 2027 fiscal year, **June 30, 2027**.

Compensation:

Based upon the above Services and the Terms and Conditions agreed to in the original executed Contract, our fee shall be as follows, including reimbursable expenses:

<u>Original Fee</u>	<u>Previous Amendments</u>	<u>This Amendment</u>	<u>Project Total Fee</u>
\$49,251.09	\$142,832.20	\$117,455.30	\$309,455.30

For Greenman-Pedersen, Inc.:



June 4, 2026

Name:	Timothy Lemire	Date
Title:	Vice President Director of Construction Engineering	



Greenman-Pedersen, Inc.

ELM ST & HIGH ST GARAGE FEE PROPOSAL FOR RFP 1035-053023 OPM SERVICES

PO 185568

DATE: June 4, 2026

Task No.	Description: RFP 1035-053023	Principle-In-Charge	Project Manager	Structural Engineer	Project Control Specialist	Total
1	Design/Pre Bid Phase Services	8	24			32
2	Bid Phase Services					0
3	Construction Phase Services (Phases 2 & 3)	91	429			520
	Total Proposed Hours	99	453	0	0	552
	DIRECT LABOR RATE (\$ per hour)	\$100.00	\$65.00	\$70.00	\$35.00	
	TOTAL DIRECT LABOR	\$9,900.00	\$29,445.00	\$0.00	\$0.00	\$39,345.00
	OFFICE INDIRECT LABOR: 165.08%	\$16,342.92	\$48,607.81	\$0.00	\$0.00	\$64,950.73
	NET FEE @ 10.00%	\$2,624.29	\$7,805.28	\$0.00	\$0.00	\$10,429.57
	TOTAL LABOR & OVERHEAD & FEE	\$28,867.21	\$85,858.09	\$0.00	\$0.00	\$114,725.30
	DIRECT EXPENSES					
	BUSINESS TRAVEL 52 weeks @ 75 miles/week		3,900	\$0.700		\$2,730.00
	SUBCONTRACTING (none anticipated)					\$0.00
	Total Direct Expenses					\$2,730.00
				Total		\$117,455.30



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-004

TO: Mayor Donchess
Finance Committee

SUBJECT: Amendment #3 for the parking garage office design in the amount not to exceed \$42,425
funded from Bond/ 53- Professional & Technical Services

Please see attached communications from Tim Cummings, Director of Administrative Services,, dated June 23, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment #3 for construction administration of the parking garage office expansion
Value: \$42,425.00
To Date: \$187,434 Finance Memo #26-040
Department: 129 City Buildings
Vendor: Randall Paulson Inc.
Fund: Bond/ 53-Professional & Technical Services

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to its scope of work or so as to increase sums payable to the contractor, without Finance Committee approval for amendment amounts exceed \$25,000; and without the Board of Aldermen amounts exceeding \$1,000,000

Administrative Services Division: City Buildings, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Enwright
T Cummings



THE CITY OF NASHUA

Administrative Services

"The Gate City"

To: James Donchess, Mayor
From: T. Cummings, Director Administrative Services
Cc: Jill Stansfield Parking Manager
Liz Hannum, Director of Economic Development

Date: June 23, 2026

Re: **Communication – Amendment of Randall Paulson contract for the parking garage office design**

Randall Paulson Architects have completed the design of the parking garage office expansion. This amendment is for construction administration duties during the construction of the parking office.

A copy of the Professional Engineering Services Contract Amendment related to the Parking Garage Office Expansion with Randall Paulson is attached, including the scope and fee. The total figure for this effort is \$42,425.00. The source of funds is the Parking Garage Repair account created to implement the project.

THANK YOU

THIRD AMENDMENT TO AGREEMENT

This Third Amendment to Agreement is entered into as of this ____ day of July, 2026, by and between **CITY OF NASHUA**, a municipality in the State of New Hampshire (hereinafter referred to as "City"), and **Randall Paulson Architects**, (hereinafter referred to as "Contractor") whose address is 82 Technology Park Way Nashua, NH 03060.

WHEREAS, City and Contractor entered into that certain Professional Services related to the Parking Garage Office Expansion with Randall Paulson Architects dated February 7, 2025 (the "Agreement"); and

WHEREAS, both City and Contractor desire to amend the Agreement to expand the scope of services and amend the budget.

NOW THEREFORE, the parties agree as follows:

1. Pursuant to Section 30 of the Agreement "Modification of Contract and Entire Agreement," the Agreement is hereby amended to add the additional scope as attached with an internal budget of \$42,425.00 to P.O. # 193163 of Randall Paulson Architects.
2. All other terms of the Agreement remain in full force and effect.

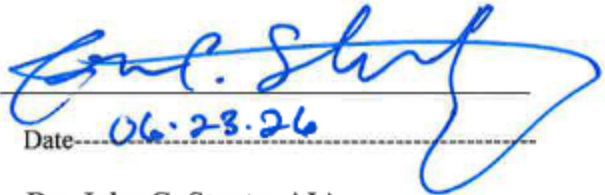
IN WITNESS WHEREOF, the parties have executed, or have caused their properly authorized representatives to duly execute, this Third Amendment to Agreement on the date and year first above written.

City of Nashua

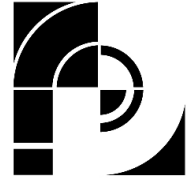
Randall Paulson Architects, Incorporated

Date: _____

By: James Donchess, Mayor


Date: 06.23.26

By: John C. Stantz, AIA



Ms. Amy Girard
City of Nashua
Purchasing Department
229 Main Street
Nashua, New Hampshire 03060

Re: City of Nashua - Parking Garage Office Expansion
Nashua, New Hampshire
RPA Project No.: 2024409.00
ASR No. 5 – VE, Bidding, CA

Amy, this is a confirmation for Additional Services for the above-referenced project. It outlines our compensation for the services requested. Your signature at the end of this agreement will indicate your acceptance and will serve as our notice to proceed. **Please sign this Add Service on the following signature page and send it back to us for our records.**

Should we be requested to work without a signed agreement, this document shall become the Terms of Agreement until such time this written agreement is signed.

I. Description of Project Scope & Professional Services

It is our understanding that the scope of work for this additional service includes an interim phase that incorporates value engineering efforts into the 80% Construction Documents set following issuance of the Schematic Design package. Included in this service is responding to bidder's questions. This additional service also includes an adjustment to the Construction Contract Administration phase to accommodate an additional three (3) months of construction.

II. Compensation

A. The compensation for the basic design services outlined in Section I.A will be performed on a stipulated sum basis as follows:

- | | |
|---|--------------|
| 1. Construction Documents: Value Engineering & Bidding | \$ 29,025.00 |
| 2. Construction Contract Administration: Three (3) Months | \$ 13,400.00 |

Total Design Compensation	\$42,425.00
----------------------------------	--------------------

B. All reimbursable expenses beyond those outlined in the scope of work will be handled as outlined in the primary project agreement.



The estimated reimbursables for this additional service shall be between \$500.00 – \$800.00.

- C. These services will be invoiced as a line item on the project primary invoice and the description as outlined in the reference heading at the beginning of this agreement. Payment terms will be the same as those stated in our primary project agreement.
- D. Terms and conditions will be the same as those outlined in our primary project agreement.

If this agreement meets your approval, please sign and return a signed copy to us for our files. If you have any questions, please call me at 770.650.7558.



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-005

TO: Mayor Donchess
Finance Committee

SUBJECT: Parking Garage Repair Construction Management Amendment #3 in the amount not to exceed \$2,300,320 funded from Bond/ 81- Capital Outlay/Improvements

Please see attached communications from Tim Cummings, Director of Administrative Services,, dated June 23, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment #3 for the remodel and expansion of the Elm Street parking garage office
Value: \$2,300,320
To Date: \$10,032,371.53 Finance Memo #26-041
Department: 129 City Buildings
Vendor: The Whiting-Turner Contracting Company
Fund: Bond/ 81-Capital Outlay/Improvements

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to its scope of work or so as to increase sums payable to the contractor, without Finance Committee approval for amendment amounts exceed \$25,000; and without the Board of Aldermen amounts exceeding \$1,000,000

Administrative Services Division: City Buildings, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Enwright
T Cummings

Jim Donchess

Mayor • City of Nashua

To: Board of Aldermen
From: Mayor Jim Donchess
Date: June 24, 2026
Re: Million Dollar Contract Award – Parking Garage Repair Construction Management Amendment #3

Pursuant to NRO : § 5-74/B: E. Approval by the Finance Committee of a contract award in excess of \$1,000,000 shall be submitted to the full Board of Aldermen at its next regularly scheduled meeting for final approval prior to award of the contract.

The Finance Committee has approved and placed on file the notification of the award of the referenced contract at the July 1, 2026 meeting and as such I am requesting the full Board of Alderman approve the following contract:

Item: Amendment for the construction management of the expansion of the Elm Street parking garage
Value: \$2,300,320
Vendor: The Whiting-Turner Contracting Company
Purchasing Memo#: 27-005 dated June 24, 2026

Thank you.



THE CITY OF NASHUA

Administrative Services

"The Gate City"

To: James Donchess, Mayor
From: T. Cummings, Director Administrative Services
Cc: Jill Stansfield Parking Manager
Liz Hannum, Director of Economic Development

Date: June 23, 2026

Re: Communication – Amendment of Whiting Turner contract for the parking garage phase 2

Whiting Turner Constructions is in the process of performing the parking garage structural repairs on the Elm and High St garages. Attached is the GMP for phase 2 of the project. Phase 2 will include the build out and renovation of the parking department office in the Elm St Garage.

A copy of the Construction Services Contract Amendment related to the Parking Garage Repairs is attached, including the scope and fee. The total figure for this effort is \$2,300,320.00. The source of funds is the Parking Garage Repair fund created to implement the project.

THANK YOU

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement is entered into as of this 1st day of July 2026, by and between **CITY OF NASHUA**, a municipality in the State of New Hampshire (hereinafter referred to as “City”), and **The Whiting-Turner Contracting Co.**, (hereinafter referred to as “Contractor”) whose address is 11 Apex Dr. Suite 201A Marlborough, MA 01752.

WHEREAS, City and Contractor entered into that certain Professional Services related to the Parking Garage Office Expansion with The Whiting-Turner Contracting Co. dated June 24, 2025 (the “Agreement”); and

WHEREAS, both City and Contractor desire to amend the Agreement to expand the scope of services and amend the budget.

NOW THEREFORE, the parties agree as follows:

1. Pursuant to Section 30 of the Agreement “Modification of Contract and Entire Agreement,” the Agreement is hereby amended to add the additional scope as attached with an internal budget of \$2,300,320.00 to P.O. # 196100 of The Whiting-Turner Contracting Co.
2. The completion date of the original contract will be extended to August 31, 2027
3. All other terms of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed, or have caused their properly authorized representatives to duly execute, this Second Amendment to Agreement on the date and year first above written.

City of Nashua

The Whiting-Turner Contracting Co.

Date:

By: James Donchess, Mayor

DocuSigned by:
J. Scott Breig
50DA60AFAE16425...

Date: 6/22/2026

By: Scott Breig, Executive Vice President

Initial
TM

DS
AJK



The Whiting-Turner Contracting Company
11 Apex Drive
Marlborough, MA 01752
508-875-4100
www.whiting-turner.com

Project Name: Elm St. Parking Office Expansion
Type of Estimate: 100% GMP
Estimate Date: June, 17th 2026
Project Location: Nashua, NH

Client: City of Nashua
Client Contact: Tim Cummings

Architect/Engineer: Randall Paulson / Fitzmeyer and Tocci

Whiting-Turner Contact: Adam Hunter

Document Set: N/A

Project Description: Remodel and expansion of the Elm St. garage parking office.



Elm St. Parking Office Expansion

100% GMP - June, 17th 2026



Elm St. Parking Office Expansion			PROJECT TOTAL	
DIVISION	COST	% COW	COST	% COW
01 General Requirements	\$ 184,940	10.78%	\$ 184,940	10.78%
02 Existing Conditions	\$ 46,500	2.71%	\$ 46,500	2.71%
03 Concrete	\$ 134,629	7.85%	\$ 134,629	7.85%
04 Masonry	\$ 208,000	12.12%	\$ 208,000	12.12%
05 Metals	\$ 59,710	3.48%	\$ 59,710	3.48%
06 Wood, Plastics, and Composites	\$ 27,146	1.58%	\$ 27,146	1.58%
07 Thermal & Moisture Protection	\$ 110,882	6.46%	\$ 110,882	6.46%
08 Openings	\$ 83,800	4.88%	\$ 83,800	4.88%
09 Finishes	\$ 263,625	15.36%	\$ 263,625	15.36%
10 Specialties	\$ 19,410	1.13%	\$ 19,410	1.13%
11 Equipment	\$ -	0.00%	\$ -	0.00%
12 Furnishings	\$ -	0.00%	\$ -	0.00%
13 Special Construction	\$ -	0.00%	\$ -	0.00%
14 Conveying Systems	\$ -	0.00%	\$ -	0.00%
21 Fire Suppression	\$ -	0.00%	\$ -	0.00%
22 Plumbing	\$ 55,846	3.25%	\$ 55,846	3.25%
23 HVAC	\$ 116,947	6.81%	\$ 116,947	6.81%
25 Integrated Automation	\$ -	0.00%	\$ -	0.00%
26 Electrical	\$ 199,683	11.64%	\$ 199,683	11.64%
27 Communications	\$ -	0.00%	\$ -	0.00%
28 Electronic Safety & Security	\$ -	0.00%	\$ -	0.00%
31 Earthwork	\$ 179,911	10.48%	\$ 179,911	10.48%
32 Exterior Improvements	\$ 25,000	1.46%	\$ 25,000	1.46%
33 Site Utilities	\$ -	0.00%	\$ -	0.00%
SUBTOTAL - COST OF WORK	\$ 1,716,028	100.00%	\$ 1,716,028	100.00%
Subcontractor Default Insurance (SDI)	\$ 22,308	1.30%	\$ 22,308	
Estimating Contingency				
Construction/CM Contingency	\$ 86,917	5.00%	\$ 86,917	
Escalation Contingency				
General Conditions - Lump Sum	\$ 361,896		\$ 361,896	
Liability Insurance	\$ 24,059	1.10%	\$ 24,059	
Whiting-Turner Bond	\$ 22,112	1.00%	\$ 22,112	
Whiting-Turner Fee	\$ 67,000	3.00%	\$ 67,000	
Builder's Risk Insurance				
PROJECT TOTALS	\$ 2,300,320 / GSF		\$ 2,300,320 / GSF	



City of Nashua
Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-006

TO: Mayor Donchess
Finance Committee

SUBJECT: Software Subscription: Vector Solutions LMS in the amount not to exceed \$79,546.29
funded from General Fund/ 54- Property Services

Please see attached communications from Glenn Nielsen, Nashua Fire Rescue Captain, dated June 23, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Software subscription for Nashua Fire Rescue's online training platform
Value: \$25,735.64 FY27
\$26,507.71 FY28
\$27,302.94 FY29
\$79,546.29 Total

Department: 152 Fire Rescue
Vendor: Target Solutions Learning, LLC d/b/a Vector Solutions
Fund: General Fund/54- Property Services
Term: 36 months

Ordinance: Pursuant to § 5-84 Special purchase procedures. A/(4) Sole-source procurements, where the proposed purchase is manufactured by only one company or where a sole company's product offers proprietary features or technology necessary for the City's requirements.

Nashua Fire Rescue, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: G Nielsen
D Enwright
T Cummings

Jim Donchess

Mayor • City of Nashua

To: Board of Aldermen
From: Mayor Jim Donchess
Date: June 24, 2026
Re: Multi-Year Contract Award – Software Subscription: Vector Solutions LMG

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

The Finance Committee has approved and placed on file the notification of the award of the referenced contract at the July 1, 2026 meeting and as such I am requesting the full Board of Alderman approve the following contract:

Item:	Software utilized to log training, licensure requirements, complete equipment checks and all department communications
Value:	\$79,546.29
Vendor:	Target Solutions Learning LLC d/b/a Vector Solutions
Purchasing Memo#:	27-006 dated June 24, 2026
Contract Term:	36 months

Thank you.



Nashua Fire Rescue
Training/Safety Division
177 Lake Street, Nashua, NH 03060-
www.nashuafire.com

Glenn W. Nielsen
Captain
(603) 589-3432
FAX (603) 589-3474

To: Chief of Department Steve M. Buxton
From: Captain Glenn Nielsen
Re: Vector Solutions LMS, Target Solutions
Date: June 23, 2026

Chief Buxton,

I am requesting the renewal of the Vector Solutions LMS. The annual renewal cost is \$25,735.64. I also believe it would be advantageous to agree to their 36-month term. Doing this would lock us in to a 3% annual increase for the 36-month term. If we do not lock in, the annual increase can range from 5%-10% or possibly more.

Renewing this subscription will ensure member access to our online training platform. We use this platform daily to log training, complete required licensure requirements, complete equipment checks and handle all department communications. This program is very intuitive and directly fulfills the NFPA requirements for training and personnel management.

Thank you for your attention to this matter.

Respectfully,

Glenn W. Nielsen

Glenn W. Nielsen
Captain, Training & Safety



Quote ID
Q-542130

Contact Name
Macey Stretch

TargetSolutions Learning, LLC Order Form
Schedule A

Date: Monday, June 22, 2026

Client Information

Client Name: Nashua Fire Rescue (NH)	
Address: 70 East Hollis Street Nashua, NH 03060	
Primary Contact Name:	Primary Contact Phone:

Agreement Term

Effective Date: 08/18/2026	Initial Term: 36 months
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Invoicing Contact Information (Please fill in missing information)

Billing Contact Name: Karen Conde		
Billing Address: 70 East Hollis Street Nashua, New Hampshire 03060		Billing Phone: 6035893478 Billing Email: condek@nashuanh.gov
PO#:	Billing Frequency: Annual	Payment Terms: Net 30

Annual Fee(s)

Product Code	Product	Description	Minimum Annual Commitment	Price	Sub Total
TSPREMIER	Vector LMS, TargetSolutions Edition Premier Membership	Training management for public entities and professionals	186	\$107.30	\$19,957.80
TSMINTFEE S	Vector LMS, TargetSolutions Edition - Maintenance Fee	Annual maintenance of Vector LMS, TargetSolutions Edition	1	\$395.00	\$395.00
TSCHECKIT-PPVEH	Vector Check It - Check It - Per Person, Equipment, DrugBox, assigned to Vehicles Only	PPE and/or Equipment assigned to individuals	186	\$28.94	\$5,382.84

Annual Total: \$25,735.64

One-Time Fee(s)

Product Code	Product	Description	Qty	Price	Sub Total
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One-Time Total: \$0.00

Total (including Annual and One-Time): \$25,735.64*This is not an invoice.*Order Form Terms and Conditions.

1. Additional Named Users added after the Effective Date (e.g., Named Users above the Minimum Annual Commitment) will be invoiced at the per Named User rate stated in the Order Form, on a prorated basis determined by the date such Users are added during the contract year. Such Additional Named Users shall be invoiced at the contracted per Named User fee for subsequent contract years during the Term.
2. Fees during the Initial Term shall be increased by 3.0% per contract year.
3. All undisputed invoices are due and payable Net 30 days after invoice date ("Due Date"). Any fees unpaid for more than 10 days past the Due Date shall bear interest at 1.5% per month or the highest applicable rate permitted by law.
4. **AUTOMATIC RENEWAL. UNLESS OTHERWISE AGREED OR WHERE PROHIBITED BY APPLICABLE LAW OR REGULATION, UPON EXPIRATION OF THE ABOVE INITIAL TERM, THIS AGREEMENT WILL RENEW FOR A RENEWAL TERM EQUAL TO THE INITIAL TERM AT VECTOR SOLUTIONS' THEN CURRENT FEES, UNLESS NOTICE IS GIVEN BY EITHER PARTY OF ITS INTENT TO TERMINATE THE AGREEMENT AT LEAST SIXTY (60) DAYS PRIOR TO THE SCHEDULED TERMINATION DATE.**

Additional Terms and Conditions

1. This Order Form is governed by the Master Software as a Service Agreement at <https://www.vectorsolutions.com/master-software-as-a-service-agreement/> (the "Governing Contract"). Capitalized terms not otherwise defined in this Order Form have the meanings assigned to them in the Governing Contract.
2. To the extent any term(s) of the Governing Contract and this Order Form conflict, the term(s) of this Order Form will supercede the conflicting term(s) of the Governing Contract.
3. This Order Form will become effective when signed by both Parties. Unless both Parties sign this Order Form, the pricing and terms offered in this Order Form expire on the Offer Expiration Date stated above.
4. This Order Form and the pricing terms herein are specific to You and shall be considered Our Confidential Information. To the extent shared with any permitted third parties pursuant to the confidentiality terms between the Parties, such third party shall be bound by terms that prohibit their use of the information for any purpose beyond providing services to You, including restricting their use of the information in any aggregated or anonymized format.
5. IF YOU ARE LOCATED OUTSIDE THE UNITED STATES, Your data, including Your and Your End Users' personally-identifiable data, will be exported to the United States to enable us to administer, operate and process the Services.

To proceed, please sign this Order Form

Signatures

Each undersigned hereby represents that he/she is an authorized representative of the respective Party, and is authorized to commit the respective Party to all terms and conditions in this Order Form, and each undersigned acknowledges that the Parties rely on such representation in their agreements set forth in this Order Form.

Target Solutions Learning, LLC d/b/a Vector Solutions
4890 W. Kennedy Blvd, Suite 300
Tampa, FL 33609

Nashua Fire Rescue (NH)
70 East Hollis Street
Nashua, NH 03060

By: _____

By: _____

Printed Name:

Printed Name:

Title: _____

Title: _____

Date: _____

Date: _____



City of Nashua
Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-007

TO: Mayor Donchess
Finance Committee

SUBJECT: Collection System Flow Monitoring in the amount not to exceed \$329,500 funded from
Wastewater Fund/ 55- Other Services

Please see attached communications from David Boucher, Superintendent of the Wastewater Department, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Meter installation and maintenance and reporting of the combined sewer overflows
Value: \$124,633.33 FY27
\$102,433.33 FY28
\$102,433.33 FY29
\$329,500 Total
Department: 169 Wastewater
Vendor: ADS Environmental Services
Fund: Wastewater Fund/ 55-Other Services
Term: 3 years

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$25,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$25,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bid, IFB0298-061026 was issued and the following bids were received:

Vendor	Location	Amount
ADS LLC	Huntsville, AL	\$329,500
Flow Assessment Services	Auburn, NH	\$359,900

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Boucher, D Enwright, T Cummings

Jim Donchess

Mayor • City of Nashua

To: Board of Aldermen
From: Mayor Jim Donchess
Date: June 24, 2026
Re: Multi-Year Contract Award – Collection System Flow Monitoring

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

The Finance Committee has approved and placed on file the notification of the award of the referenced contract at the July 1, 2026 meeting and as such I am requesting the full Board of Alderman approve the following contract:

Item: Flow monitoring and combined sewer overflows (CSOs) for the wastewater collection system
Value: \$329,500
Vendor: ADS Environmental Services
Purchasing Memo#: 27-007 dated June 24, 2026
Contract Term: 3 years

Thank you.

City of Nashua, Public Works Division

To: Board of Public Works

Meeting Date: June 25, 2026

From: David L. Boucher, Superintendent
Wastewater Department

Re: Collection System Flow Monitoring

B. Motion: To approve the three-year contract in an amount not to exceed \$329,500 ADS, LLC of Huntsville, AL for the flow monitoring of the collection system. Pending approval of FY27 budget; funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 55 Other Services.

Attachments: Bid Summary Schedule

Discussion: The City of Nashua is required by the U.S. Environmental Protection Agency (EPA) to monitor its combined sewer overflows (CSOs) for activity. In addition, the City monitors flow throughout the wastewater collection system to support regulatory compliance, system performance evaluation, and operational planning.

The City solicited competitive bids for these monitoring services and received two responsive proposals. ADS, LLC, headquartered in Huntsville, Alabama, submitted the lowest responsible bid.

ADS has extensive experience providing flow monitoring and CSO monitoring services for municipalities and regional sewer authorities of similar size and complexity, including the Boston Sewer District. Based on the firm's qualifications, relevant experience, and competitive pricing, ADS is well qualified to perform the required services and is recommended for contract award.

	Installation of Meters	3 years Maintenance and Reporting	Total Bid Price for 3 years
ADS, LLC of Huntsville, AL	\$22,200	\$307,300	\$329,500
Flow Assessment of Auburn, NH	\$2,600	\$357,300	\$359,900



Contract for Independent Contractor

CSO FLOW MONITORING PROGRAM

IFB0298-061026

A CONTRACT BETWEEN

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

ADS ENVIRONMENTAL SERVICES
and its successors, transferees and assignees (together "Independent Contractor")

(Name and Title of Independent Contractor)

340 The Bridge Street, Suite 204, Huntsville, AL 35806

(Address of Independent Contractor)

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

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

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

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

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

EXHIBIT A - General Conditions for Contracts
EXHIBIT B - Scope of Services
EXHIBIT C - Bid Schedule

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

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

2. Work to be Performed. Except as otherwise provided in this contract, Independent Contractor shall furnish

all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

Description of Work:

PROVIDE FLOW MONITORING SERVICES AT SEVENTEEN (17) SPECIFIED LOCATIONS, AS WELL AS THREE (3) RAIN GAUGE LOCATIONS, THROUGHOUT THE CITY'S COLLECTION SYSTEM. THE FLOW MONITORING SYSTEM SHALL PROVIDE REAL-TIME MONITORING, REMOTE NOTIFICATION, AND MONTHLY REPORTING AS OUTLINED IS SCOPE OF SERVICES.

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

The term of the contract will be for three (3) years with the first year commencing on or about **July 1, 2026** and terminating on or about **June 30, 2029**. Each year is subject to annual budget appropriations and at the City of Nashua's discretion.

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

THREE HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS

(\$329,500)

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

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

- Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to: **City of Nashua, City Hall
Accounts Payable
229 Main Street
Nashua, NH 03060**

Please do not submit invoices both electronically and paper copy.

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

The City of Nashua will pay for work satisfactorily completed and accurately invoiced by Independent Contractor within thirty (30) days from the time of approval by the City of Nashua.

5. Effective Date of Contract. This contract shall not become effective until the date of execution by the City of Nashua.

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

<u>City of Nashua Representative:</u>	<u>Independent Contractor Representative:</u>
Noelle Osborne, Operations Supervisor	Tony Yang, Director of Finance
City of Nashua –Wastewater Treatment Facility	ADS LLC
2 Sawmill Road	340 The Bridge Street Suite 204
Nashua, NH 03060	Huntsville, AL 35806
Email: OsborneN@NashuaNH.gov	Email: xyang1@idexcorp.com

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

In Witness Whereof, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

ADS LLC (signature)

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

(Printed Name and Title)

Date

Date

Exhibit A
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General Terms and Conditions

1. **Definitions.** Unless otherwise required by the context, "Independent Contractor", and its successors, transferees and assignees (together "Independent Contractor") includes any of the Independent Contractor's consultants, sub consultants, contractors, and subcontractors
2. **Independent Contractor Status.** The parties agree that Independent Contractor shall have the status of and shall perform all work under this contract as an Independent Contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Independent Contractor, and nothing in this contract shall create any contractual relationship between the City of Nashua and Independent Contractor's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Independent Contractor is not a City of Nashua employee and that there shall be no:
 - (1) Withholding of income taxes by the City of Nashua;
 - (2) Industrial insurance coverage provided by the City of Nashua;
 - (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
 - (4) Participation or contributions by either the Independent Contractor or the City of Nashua to the public employee's retirement system;
 - (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
 - (6) Unemployment compensation coverage provided by the City of Nashua.
3. **Standard of Care.** Independent Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Independent Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Independent Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Independent Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Independent Contractor's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Independent Contractor shall not in any way relieve Independent Contractor of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Independent Contractor's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Independent Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Independent Contractor shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Independent Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Independent Contractor without the prior written approval of the City of Nashua, except in the event of termination of employment. Independent Contractor shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

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

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

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

6. **City of Nashua Cooperation.** The City of Nashua agrees that its personnel will cooperate with Independent Contractor in the performance of its work under this contract and that such personnel will be available to Independent Contractor for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City of Nashua also agrees to provide Independent Contractor with access to City of Nashua records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City of Nashua and Independent Contractor also agree to attend all meetings

called by the City of Nashua or Independent Contractor to discuss the work under the Contract, and that Independent Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

7. **Discovery of Conflicts, Errors, Omissions, Ambiguities, or Discrepancies.** Independent Contractor warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Independent Contractor. All future questions Independent Contractor may have concerning interpretation or clarification of

this contract shall be submitted in writing to the City of Nashua within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Independent Contractor's question or position. The City of Nashua representative shall render a decision within 15 calendar days. The City of Nashua's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Independent Contractor prior to having received the City of Nashua's resolution shall be at Independent Contractor's risk and expense. At all times, Independent Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. Independent Contractor is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. Termination of Contract

A. Termination, Abandonment, Or Suspension at Will. The City of Nashua, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City of Nashua chooses to terminate, abandon, or suspend all or part of the project, it shall provide Independent Contractor 10 days' written notice of its intent to do so.

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

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

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

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

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

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

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

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

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

C. General Provisions for Termination. Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Independent Contractor shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Independent Contractor assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Independent Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Independent Contractor's control.

9. **Dispute Resolution.** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the

submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and an Independent Contractor Representative. At all times, Independent Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, if requested in writing by either the City of Nashua or the Independent Contractor within 14 days after the 30 days described above, the parties shall attempt to resolve the dispute by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties; which agreement shall not be unreasonably withheld. If the parties cannot agree to a mediator within 30 days or the dispute cannot be settled within a period of thirty (30) days with the mediator, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

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

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

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

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

Independent Contractor will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract. The City of Nashua requires thirty days' written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire.

General Liability, Employers' Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance. Independent Contractor is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

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

12. Indemnification. Regardless of any coverage provided by any insurance, Independent Contractor agrees to indemnify and hold harmless the City of Nashua, its agents, officials, employees and authorized representatives and their employees from and against all third-party claims for personal injury or property damage, including reasonable attorney's fees, to the extent occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Independent Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Independent Contractor's indemnity and hold harmless obligations, or portions thereof, shall not apply to liability caused by the negligence or willful misconduct of the party indemnified or held harmless.

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

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

14. Compensation. Review by the City of Nashua of Independent Contractor's submitted invoice forms for payment will be promptly accomplished by the City of Nashua. If there is insufficient information, the City of Nashua may require Independent Contractor to submit additional information. The City of Nashua shall pay Independent Contractor all undisputed amounts in full within **30 days of approval** of the submitted invoice forms.

15. Compliance with Applicable Laws. Independent Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract,

including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans with Disabilities Act. Independent Contractor shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. **Nondiscrimination.** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Independent Contractor agrees to the following terms. Independent Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Independent Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

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

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

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

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

17. **Endorsement.** Independent Contractor shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Independent Contractor or under its direction as required under the laws of the State of New Hampshire.
18. **Assignment, Transfer, Delegation, or Subcontracting.** Independent Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such

assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

19. **City Inspection of Contract Materials.** The books, records, documents and accounting procedures and practices of Independent Contractor related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
20. **Disposition of Contract Materials.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Independent Contractor in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Independent Contractor's expense, by Independent Contractor to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Independent Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Independent Contractor in the performance of its obligations under this contract must be retained by Independent Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Independent Contractor shall promptly remit and deliver the materials, at Independent Contractor's expense, to the City of Nashua. Independent Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Independent Contractor's obligations under this contract without the prior written consent of the City of Nashua.
21. **Public Records Law, Copyrights, and Patents.** Independent Contractor expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Independent Contractor (including those remitted to the City of Nashua by Independent Contractor pursuant to paragraph 20), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

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

Independent Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City of Nashua or any of its officers or employees, in either their official or individual capacity of the City of Nashua, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Independent Contractor agrees to indemnify, to defend, and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability,

costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Independent Contractor infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Independent Contractor infringes any patent.

Independent Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

22. **Final Acceptance.** Upon completion of all work under the contract, Independent Contractor shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Independent Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Independent Contractor with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Independent Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.
23. **Taxes.** Independent Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Independent Contractor hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
24. **Non-Waiver of Terms and Conditions.** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.
25. **Rights and Remedies.** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
26. **Prohibited Interests.** Independent Contractor shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or the proceeds of this contract. Independent Contractor warrants that no officer or employee of the City of Nashua has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Independent Contractor. If any such interest comes to the attention of Independent Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Independent Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Independent Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If City of Nashua determines that a conflict exists and was not disclosed to the City of Nashua, it may terminate the contract at will or for cause in accordance with paragraph 8.

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

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

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

27. **Third Party Interests and Liabilities.** The City of Nashua and Independent Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Independent Contractor.
28. **Survival of Rights and Obligations.** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.
29. **Severability.** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.
30. **Modification of Contract and Entire Agreement.** This contract constitutes the entire contract between the City of Nashua and Independent Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.
31. **Choice of Law and Venue.** This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

CITY OF NASHUA, NEW HAMPSHIRE
IFB0298-061026
COLLECTION SYSTEM FLOW MONITORING PROGRAM

SCOPE OF WORK

I. GENERAL

The City of Nashua, Division of Public Works, is soliciting bids from qualified independent contractors to provide flow monitoring services at seventeen (17) specified locations, as well as three (3) rain gauge locations, throughout the City's collection system. The flow monitoring system shall provide real-time monitoring, remote notification, and monthly reporting, as described herein.

II. BACKGROUND

The City of Nashua owns and operates a wastewater treatment facility located at 2 Sawmill Road in Nashua, New Hampshire. This facility is permitted by the Environmental Protection Agency (EPA) and regulated under National Pollutant Discharge Elimination System (NPDES) Permit No. NH0100170.

The City maintains over 400 miles of collection system, including sanitary, combined, and stormwater infrastructure. There are nine (9) permitted combined sewer overflow (CSO) locations, eight (8) interceptor locations, and three (3) rain gauge locations that shall be monitored.

CSO location descriptions:

- **CSO 002**, 42°44'51.1"N 71°26'37.2"W, located at the Wastewater Treatment Facility, this overflow discharges to the Merrimack River.
- **CSO 003**, 42°44'20.0"N 71°26'28.2"W, located parallel to Farmington Rd, this overflow discharges to the Merrimack River.
- **CSO 004**, 42°45'13.0"N 71°26'25.6"W, located off of Burke Street, this overflow discharges to the Merrimack River.
- **CSO 005**, 42°45'47.8"N 71°26'41.8"W, located at the pump station off of East Hollis Street, between the two lanes of the Hudson Bridge, this overflow discharges to the Merrimack River.
- **CSO 006**, 42°44'51.1"N 71°26'37.2"W, located off of Bridge Street, this overflow discharges to the Nashua River.
- **CSO 007**, 42°45'44.2"N 71°28'40.4"W, located off of Tampa Street, this overflow discharges to the Nashua River.
- **CSO 008**, 42°46'09.4"N 71°29'16.7"W, located off of Broad Street, this overflow discharges to the Nashua River.
- **CSO 009**, 42°46'03.4"N 71°27'25.3"W, located off of Locke Street, this overflow discharges to the Nashua River.
- **CSO 014**, 42°45'49.7"N 71°26'48.2"W, located off of Bancroft Street, this overflow discharges to the Merrimack River.

CITY OF NASHUA, NEW HAMPSHIRE
IFB0298-061026
COLLECTION SYSTEM FLOW MONITORING PROGRAM

EXHIBIT B

SCOPE OF WORK

Interceptor location descriptions:

- **SS-MH788**, 42°44'46.25"N 71°26'32.74"W, 36" Diameter Line, Sawmill Rd
- **SS-MH1241**, 42°45'07.02"N 71°26'28.02"W, 66" Diameter Line, Burke St
- **SS-MH1252**, 42°44'56.06"N 71°26'51.70"W, 48" Diameter Line, Burke St
- **SS-MH3729**, 42°45'43.00"N 71°28'43.86"W, 48" Diameter Line, Tampa St
- Additional four (4) – locations TBD

Rain gauge location descriptions:

- **Sawmill Rd**, 42°44'51.15"N 71°26'37.17"W
- **Charlotte Ave Elementary School**, 42°46'29.29"N 71°28'57.15"W
- **Jackson St**, CSO 006, 42°45'56.70"N 71°27'04.08"W

III. CONTRACT LENGTH:

The contract term shall be for an initial period of three (3) years, commencing on or about **July 1, 2026**, and terminating on **June 30, 2029**. The City may, at its sole discretion, extend the contract for up to two (2) additional one-year terms, contingent upon satisfactory contractor performance.

All contract years, including any extensions, are subject to annual budget appropriations.

IV. DESCRIPTION OF THE WORK:

General

The Contractor shall supply, install, and maintain seventeen (17) flow monitors and three (3) rain gauges, as described above. The Contractor shall retain ownership of all equipment and, upon termination of the contract, shall coordinate the prompt removal of all equipment with the City's designated contact.

Initial Installation

The Contractor shall meet with the City's project team to establish communication protocols, points of contact, review the scope of work, and identify any relevant information related to permits, EPA regulations, and site conditions. The Contractor shall be responsible for the administration and management of the project in its entirety.

CITY OF NASHUA, NEW HAMPSHIRE
IFB0298-061026
COLLECTION SYSTEM FLOW MONITORING PROGRAM

SCOPE OF WORK

Preliminary Site Assessment

The Contractor shall perform detailed site investigations and propose installation locations. Each location shall be physically inspected by the Contractor, including entry through manholes where necessary. As-built drawings shall not be relied upon as complete or accurate. All flow calculations shall be the responsibility of the Contractor. Final installation locations must be approved by the City.

Site Access

All locations are physically accessible, although some may require access via easements. Entry into active sewer systems shall require confined space entry procedures, and the Contractor shall comply with all applicable federal, state, local, and OSHA regulations.

Equipment – Flow Monitoring

All flow monitoring equipment shall measure both level and velocity. Proposed equipment must be approved by the City prior to installation. Each instrument shall be calibrated upon installation and maintained in accordance with manufacturer-recommended intervals.

The Contractor shall be responsible for all maintenance, including communications, cleaning, calibration, and battery replacement.

Each location shall include data loggers capable of recording data at intervals no greater than five (5) minutes and transmitting data to a Contractor-maintained server at intervals no greater than thirty (30) minutes. All equipment necessary for data transmission shall be provided by the Contractor. The server shall be secure and backed up daily.

Equipment – Rain Gauge

The Contractor shall supply and install three (3) permanent telemetered rain gauges at the specified locations. Each instrument shall be calibrated upon installation and maintained in accordance with manufacturer recommendations.

The Contractor shall be responsible for all maintenance, including communications, cleaning, calibration, and battery replacement.

Rain gauges shall include data loggers capable of recording data at intervals no greater than five (5) minutes and transmitting data to a Contractor-maintained server at intervals no greater than thirty (30) minutes. The server shall be secure and backed up daily.

CITY OF NASHUA, NEW HAMPSHIRE
IFB0298-061026
COLLECTION SYSTEM FLOW MONITORING PROGRAM

SCOPE OF WORK

Data - Review, Analysis, and Reports

Data stored on the Contractor's server shall be accessible to City staff via a secure, password-protected website, available 24 hours per day, 365 days per year. The system shall be web-based and accessible through a standard internet browser. Multiple users shall be able to access the system simultaneously.

At a minimum, available data shall include hydrographs and tabular summaries showing minimum, maximum, and average flows for each device. Users shall be able to select monitoring locations and date ranges.

The Contractor shall respond promptly to City inquiries regarding data quality or equipment performance.

Monthly reports shall be submitted to the City's designated contact by the tenth (10th) day of each month for the preceding month. Reports may be submitted electronically and shall include, at a minimum, graphical summaries, Excel data files, and written summaries for each monitoring location.

Notification of Overflow Activation

Instrumentation shall include the capability to provide notifications and alerts via email and text message to multiple contacts in the event of an overflow, alarm condition, or other significant activity.

Training

The Contractor shall provide all necessary training to City staff for accessing and utilizing the system.

V. INDEPENDENT CONTRACTOR SELECTION

The selected Contractor shall be a professional firm regularly engaged in sewer collection system flow monitoring. The contract will be awarded to the lowest responsive and responsible qualified bidder.

Selection shall be based on the bidder's demonstrated experience, organizational capacity, technical and professional qualifications, available resources, project understanding, proposed approach, ability to meet required schedules, and record of past performance and cost control.

CITY OF NASHUA, NEW HAMPSHIRE
IFB0298-061026
COLLECTION SYSTEM FLOW MONITORING PROGRAM

SCOPE OF WORK

The City of Nashua reserves the right to reject any or all bids without explanation. Such action shall not give rise to any claim or cause of action by any unsuccessful bidder.

Bidders may be required to submit additional information and participate in interviews as part of the evaluation process.

The City reserves the right to accept the bid that offers the greatest overall benefit and to waive any informalities or irregularities in the bidding process, as deemed to be in the best interest of the City.

**Collection System Flow Monitoring Program
IFB0298-061026
BID SUMMARY SHEET**

PROJECT

1. Set-Up and installation of flow monitors, sensors, rain gauges and web-based data reporting system (includes supply of all equipment, determination of best location, training, calibration of equipment and set-up to make monitoring system operational). \$ 22,200.00
2. Maintenance for three calendar years (includes maintenance of flow monitors, sensors, rain gauges, and web-site, monthly reports, and technical support as needed). Amount to be invoiced and paid on a monthly basis. \$ 307,300.00

TOTAL BID PRICE: \$ 329,500.00

SUPPLEMENTAL PRICING

3. Maintenance for fourth calendar year (includes maintenance of flow monitors, sensors, rain gauges, web-site, monthly reports, and technical support as needed). \$ 104,482.00
4. Maintenance for fifth calendar year (includes maintenance of flow monitors, sensors, rain gauges, web-site, monthly reports, and technical support as needed). \$ 106,571.64

Contractor: ADS LLC

Authorized Signature:  Tony Yang (Jun 10, 2026 09:14:30 CDT)

Date: 06/10/2026

Address: 340 Bridge Street, Suite 204 Huntsville, AL 35806

Phone: 256-430-3366

Email Address: brukavina@idexcorp.com



City of Nashua
Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-008

TO: Mayor Donchess
Finance Committee

SUBJECT: Long-Term Management of Biosolids FY26 Amendment #2 in the amount not to exceed \$60,000 funded from Wastewater Fund/ 54- Property Services

Please see attached communications from David Boucher, Superintendent of the Wastewater Department, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment #2 for the hauling and disposal of biosolids
Value: \$60,000
To Date: \$1,093,176 Finance Memo# 25-152
Department: 169 Wastewater
Vendor: Resource Management, Inc.
Fund: Wastewater Fund/ 54-Property Services

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$25,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$25,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Boucher
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works

Meeting Date: June 25, 2026

From: David Boucher, Superintendent
Wastewater Department

Re: Long Term Management of Biosolids

C. Motion: To approve Amendment 2 in an amount not to exceed \$60,000 to the contract with Resource Management, Inc (RMI) of Holderness, NH for management of biosolids at the Wastewater Treatment Facility. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 54 Property Services.

Attachments: Amendment Two

Discussion: The Wastewater Facility's biosolids management program has been provided by RMI under contract for the past four years. Amendment No. 1 covered the fourth year of the agreement; however, actual biosolids quantities and associated hauling and disposal costs exceeded the amount originally budgeted for the fiscal year.

The City has one remaining invoice to be paid under the FY26 contract. Based on current projections, the contract balance will be insufficient to cover this final invoice by approximately \$60,000. Amendment No. 2 is required to provide the additional funding necessary to complete payment for services rendered through the end of the fiscal year.

**AMENDMENT No.2
TO
CONTRACT FOR INDEPENDENT CONTRACTOR**

LONG-TERM MANAGEMENT OF WASTEWATER BIOSOLIDS

**BETWEEN
CITY OF NASHUA
AND
RESOURCE MANAGEMENT, INC.**

This **AMENDMENT No. 2**, dated _____ is attached to and made part of the **CONTRACT FOR INDEPENDENT CONTRACTOR** between the City of Nashua, New Hampshire and Resource Management, Inc. for Long-Term Management of Wastewater Biosolids dated June 6, 2022 (“AGREEMENT”).

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

WHEREAS, Section 3 of the **AGREEMENT** states the period of performance is from July 1, 2022 to June 30, 2025, and was amended on April 9, 2025 to extend the period of performance through June 30, 2026, and Section 4 describes compensation; and

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

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

1. **INDEPENDENT CONTRACTOR** agrees to perform the work under this **AMENDMENT No. 2** in accordance with the Fee Schedule outlined in **AMENDMENT No. 1**, for a total cost not to exceed

SIXTY THOUSAND DOLLARS (\$ 60,000.00)

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

3. This **AMENDMENT No. 2**, along with the **AGREEMENT** and **AMENDMENT No. 1** dated **April 9, 2025** constitutes the entire **AGREEMENT** and understanding between the parties and supersedes all prior agreements and understandings relating hereto.

AMENDMENT No.2
TO
CONTRACT FOR INDEPENDENT CONTRACTOR
LONG-TERM MANAGEMENT OF WASTEWATER BIOSOLIDS
BETWEEN
CITY OF NASHUA
AND
RESOURCE MANAGEMENT, INC.

OWNER:

INDEPENDENT CONTRACTOR:

City of Nashua, NH (signature)

Resource Management, Inc. (signature)

James Donchess, Mayor
(Printed Name and Title)

Shelagh Connelly, President
(Printed Name and Title)

Date

6/23/2026

Date



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-009

TO: Mayor Donchess
Finance Committee

SUBJECT: FY27 DPW Facilities Cleaning Services in the amount not to exceed \$90,000 funded from
General Fund/ Wastewater Fund/ 54- Property Services

Please see attached communications from Lisa Fauteux, Director of Public Works, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Cleaning services for the DPW, Streets and Wastewater Treatment Facilities

Value: \$90,000

Department: 160 Admin/Engineering
161 Streets
168 Solid Waste
169 Wastewater

Vendor: Bill's World Class Cleaning

Fund: General Fund/ Wastewater Fund/ 54-Property Services

Ordinance: Pursuant to § 5-84 Special purchase procedures. A/(7) Purchases under extensions of contracts when no price increase exceeds 10% per year and where a market change has not reduced pricing in the product category.

Division of Public Works, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: L Fauteux
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

From: Lisa Fauteux, Director of Public Works
Administration

Re: DPW Facilities Cleaning FY27 Agreement

A. Motion: To approve an agreement with Bill's World Class Cleaning Service of North Hampton, NH in the amount of \$90,000 for cleaning of the DPW Facility, Street and Traffic Buildings and the Wastewater Treatment Facility. Funding will be through: 160 Admin/Engineering, 161 Streets and 168 Solid Waste; Fund: General; Account Classification: 54 Property Services; 169 Wastewater; Fund: Wastewater; Account Classification: 54 Property Services.

Discussion: Bill's World Class Cleaning Service has cleaned the DPW Facility since March of 2023, Street and Traffic Buildings since May 2023 and the Wastewater Treatment Facility since January 2025. The vendor has agreed to hold their pricing through June 30, 2027. In addition, they are professional, are easy to work with, and we are very happy with their work.



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: Bill's World Class Cleaning Service
63 Post Road
North Hampton, NH 03862
and its successors, transferees and assignees
(together "**CONTRACTOR**")

For the following Project: DPW Facilities Cleaning

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. Price quote submitted June 4, 2026;
3. Insurance Certificate;
4. Written change orders for minor changes in the Work issued after execution of this Agreement; and
5. 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.

DESCRIPTION OF WORK:

Cleaning, as outlined in **Exhibit B**, of

1. Division of Public Works Administration building located at 848 West Hollis Street.
2. Wastewater Treatment Facility located at 2 Sawmill Road.
3. Street, Traffic and Fleet located at 9 Stadium Drive.

ARTICLE 3 – PERIOD OF PERFORMANCE

The term of the contract will be from **July 1, 2026 through June 30, 2027**.

Independent Contractor shall perform and complete all work within the time periods set forth and may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract.

ARTICLE 4 – CONTRACT SUM

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

DPW Administration Building

\$4,000 - FOUR THOUSAND AND 00/100 DOLLARS per month

Wastewater Treatment Facility

\$2,900 - TWO THOUSAND NINE-HUNDRED AND 00/100 DOLLARS per month

Street/Traffic and Fleet Buildings

\$600 – SIX HUNDRED AND 00/100 DOLLARS per month

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, Employers' 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**.

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. 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.
4. 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.
5. 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.
6. The **CONTRACTOR** shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
7. 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.
8. The **CONTRACTOR** shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
9. 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 if applicable.
10. 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.
11. 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.
12. The **CONTRACTOR** shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the **OWNER**.
13. The **CONTRACTOR** shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly.
14. The **CONTRACTOR** shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
15. Upon completion of WORK, **CONTRACTOR** warrants and guarantees to **OWNER, for one (1) year**, and that all WORK was completed in accordance with the Contract Documents and will not be defective. **CONTRACTOR's** warranty and guarantee hereunder excludes defects or damage caused by:
 - Abuse, modification, or improper maintenance or operation by persons other than **CONTRACTOR**, subcontractors, suppliers, or any other individual or entity for whom **CONTRACTOR** is responsible; or
 - Normal wear and tear under normal usage.

ARTICLE 9 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The **OWNER**, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
2. A Change Order shall be a written order to the **CONTRACTOR** signed by the **OWNER** to change the Work, Contract Sum or Contract Time.
3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%. Change Orders may require approval by the Board of Public Works and the **OWNER's** Finance Committee vote prior to proceeding.
4. The **OWNER** will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the **OWNER** and **CONTRACTOR**. The **CONTRACTOR** shall carry out such written orders promptly.
5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the **OWNER** to the charges.

ARTICLE 10 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.
2. If the **CONTRACTOR** is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the **CONTRACTOR's** control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the **OWNER** to the **CONTRACTOR** for performance of the Work under the Contract Documents.
2. Once every thirty (30) days, the **CONTRACTOR** shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the **CONTRACTOR's** right to payment as the **OWNER** may reasonably require.
3. Application for Payment performed under this agreement shall be submitted as follows:
 - Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

4. The **CONTRACTOR** warrants that title to all Work covered by an Application for Payment will pass to the **OWNER** no later than the time of payment. The **CONTRACTOR** further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the **OWNER** shall, to the best of the **CONTRACTOR's** knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the **OWNER's** interests.
5. **OWNER** shall make payments, for work satisfactorily completed and accurately invoiced, on the basis of **CONTRACTORs** Application for Payment, within 30 days of approval by the **OWNER**.
6. The **CONTRACTOR** shall promptly pay each subcontractor and supplier out of the amount paid to the **CONTRACTOR** on account of such entities' portion of the Work.
7. The **OWNER** shall have no responsibility for the payment of money to a subcontractor or supplier.
8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the **OWNER** shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the **OWNER** can occupy or utilize the Work for its intended use.
10. When the Work or designated portion thereof is substantially complete, the **CONTRACTOR** and **OWNER** shall establish responsibilities for completion and shall fix the time within which the **CONTRACTOR** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
11. Upon receipt of a final Application for Payment, the **OWNER** will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the **OWNER** will promptly issue a final Certificate for Payment.
12. Acceptance of final payment by the **CONTRACTOR**, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 12 – 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 13 – 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 14 – 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 15 – 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 16 – DISPUTE RESOLUTION

The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid

under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the **OWNER** Representative and the **CONTRACTOR** Representative. At all times, **CONTRACTOR** shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the **OWNER**. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

ARTICLE 17 – 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 18 – MISCELLANEOUS PROVISIONS

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

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

City of Nashua, NH (signature)

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

Date



Bill's World Class Cleaning Service (signature)



(Printed Name and Title)



Date

EXHIBIT B

BILLS WORLD CLASS CLEANING SERVICE

63 POST ROAD

NORTH HAMPTON NH 03862

EMAIL. Bill.liamos1@gmail.com

DPW Nashua NH 03062, 848 W Hollis ST,

Price Quote for cleaning per month July 1st 2026 – June 30th 2027

\$4000,00 Per Month, 5 Days per week

Scope of work

Clean and disinfect all bathrooms daily

Vacuum all floors, plus wet mop all tile floors

Empty all trash barrels, and recycling daily

Feather dust weekly

Clean all kitchens daily

Clean all lobby windows

Polish elevator when needed

Disinfect all conference tables daily, and door handles, and railings

Spot clean walls as needed

This is for both floors 1 and 2

Clean scale house

Thank you for your business

Vice President Gary Richardson

603-765-0389. email billsworldclasscleaningservice@comcast.net

Bills World Class Cleaning Service

July 1, 2026 - June 30, 2027

City of Nashua

Wastewater Treatment Facility

Noelle Osborne, Plant Operations Supervisor

RE: Estimate

Dear Noelle,

Price Quote: \$2,900.00 per month, Cleaning 3 times per week

Duties Include:

Clean and disinfect all bathrooms, sinks, toilets, showers

Clean and disinfect all kitchen areas

Clean and disinfect all offices, conference rooms, desks, and tables

Empty all trash cans, and replace liners

Vacuum all floors, carpet, tile, and wet mop

Feather dust

Clean all lobby windows

Vacuum and wet mop all stairwells

3rd clean bathrooms, and kitchens only

Thank You for your consideration

Sincerely,

Vice President, Gary Richardson

BILLS WORLD CLASS CLEANING SERVICE

63 POST ROAD

NORTH HAMPTON NH 03862

EMAIL. Bill.liamos1@gmail.com

603-765-0287

Street Department, Traffic, Fleet

7 Stadium Drive, Nashua NH 03062

July 1, 2026 - June 30, 2027

Price Quote

\$600.00 Per Month

Thank You For Your Business

Vice President Gary Richardson



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/16/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CORRIVEAU INSURANCE AGENCY INC 115 MAIN ST STE 6 NASHUA NH 03060		CONTACT NAME: P BOUCHARD PHONE (A/C, No, Ext): (603) 883-5528 FAX (A/C, No): (603) 883-5529 E-MAIL ADDRESS: info@corriveauinsurance.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: MMG INSURANCE CO	15997
		INSURER B: TECHNOLOGY INS CO INC	42376
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ AI BP0450 attached GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	X		SC12448328	06/27/2025	06/27/2026	EACH OCCURRENCE \$ 2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000						
	MED EXP (Any one person) \$ 10,000						
	PERSONAL & ADV INJURY \$ 2,000,000						
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	X		SC12448328	06/27/2025	06/27/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
A	☒ UMBRELLA LIAB ☒ EXCESS LIAB DED RETENTION \$			KU12448328	06/27/2025	06/27/2026	EACH OCCURRENCE \$ 1,000,000
	AGGREGATE \$ 1,000,000						
	\$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N Y	N / A	TARNH1021197-07NH	01/12/2026	01/12/2027	☐ PER STATUTE ☒ OTH-ER
	E.L. EACH ACCIDENT \$ 1,000,000						
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000						
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

FOR PROOF OF INSURANCE

THE CERTIFICATE HOLDER IS ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY & AUTO LIABILITY AS PER WRITTEN CONTRACT.

WILLIAM LIAMOS AND GARY RICHARDSON EXCLUDED ON THE NH WORKERS COMPENSATION POLICY.

CERTIFICATE HOLDER**CANCELLATION**

CITY OF NASHUA 229 MAIN ST NASHUA NH 03060	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-010

TO: Mayor Donchess
Finance Committee

SUBJECT: 2026 Paving Contract 2 Change Order #2 in the amount not to exceed \$630,000 funded from Bond/ 54- Property Services

Please see attached communications from Daniel Hudson, City Engineer, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Change Order #2 for paving work on Manchester Street and West Hollis Street
Value: \$630,000
To Date: \$5,322,326.50 Finance Memo #26-178
Department: 160 Admin/Engineering
Vendor: Sunshine Paving Corporation
Fund: Bond/ 54-Property Services

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to its scope of work or so as to increase sums payable to the contractor, without Finance Committee approval for amendment amounts exceed \$25,000; and without the Board of Aldermen amounts exceeding \$1,000,000

Division of Public Works: Engineering, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

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

Re: 2026 Paving Program Contract 2 – Change Order No. 2

B. Motion: To approve Change Order No. 2 to the 2026 Paving Program Contract 2 with Sunshine Paving Corporation of Hudson, NH in an amount not to exceed \$630,000. Funding will be through: Departments 160 Admin/Eng and Wastewater; Funds: Bond; Activities: Paving, Sewer Infrastructure Improvements.

Discussion: During the winter bidding season, two paving contracts were advertised for the 2026 Paving Program. Due to budget constraints, Contract #1 was not awarded. Sunshine Paving Corporation was the low bidder and subsequently awarded Contract #2. This change order proposes additional paving work on sections of Manchester Street and West Hollis Street, along with associated ancillary construction items, to further advance the City's roadway improvement program.

With this change order, the contract will be amended as follows:

Original Contract	\$4,972,326.50
Change Order No. 1 (Not to Exceed)	\$350,000.00
Change Order No. 2 (Not to Exceed)	\$630,000.00
Total Amended Contract (Not to Exceed)	\$ 5,952,326.50

CHANGE ORDER

No. 2

PROJECT: 2026 Paving Program Contract 2

EXECUTED CONTRACT DATE: March 11, 2026

DATE OF ISSUANCE: Upon City Approval EFFECTIVE DATE: Upon City Approval

OWNER: City of Nashua, NH

OWNER's Purchase Order NO.: 201785

CONTRACTOR: Sunshine Paving Corporation

The Contract is modified as follows upon execution of this Change Order:

Description:

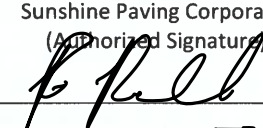
1. To increase the following items to support additional paving work on West Hollis Street, Manchester Street, and Columbia Avenue.
 - Add 2,400 tons of Item 403.11 – Hot Bituminous Pavement, Machine Method for a total cost of \$350,400
 - Add 50 tons of Item 403.12 – Hot Bituminous Pavement, Hand Method for a total cost of \$10,000
 - Add 11,090 LF of Item 403.6 – Pavement Joint Adhesive for a total cost of \$5,545
 - Add 25,000 SY of Item 417 – Cold Planing of Bituminous Surfaces for a total cost of \$100,000
 - Add 765 SY of Item 417.2 – Cold Planing Transitions for a total cost of \$26,775
 - Add 45 EA of Item 604.46 – Replace Casting for a total cost of \$23,175
 - Add 150 SY of Item 608.36 – 6" Reinforced Concrete Sidewalk for a total cost of \$21,000
 - Add 16 SY of Item 608.54 – 6" Detectable Warning Devices, Cast Iron for a total cost of \$32,000
 - Add 4 EA of Item 616.7 – Local Traffic Loops for a total cost of \$10,000
 - Add additional allowance to Item 618.6 – Uniformed Officers for a total \$15,000
 - Add 100 HR of Item 618.7 – Flaggers for a total cost of \$5,000
 - Add 20,000 LF of Item 632.0104 – Retroreflective Paint Pavement Markings, 4" Line for a total cost of \$6,000
 - Add 400 LF of Item 632.3112 – Retroreflective Thermoplastic Pavement Markings, 12" Line for a total cost of \$2,380
 - Add 500 SF of Item 632.32 - Retroreflective Thermoplastic Symbol for a total cost of \$3,975
 - Add 50 SY of Item 641 – Loam and Seed for a total cost of \$8,750
 - Add additional allowance to Item 1010.2 – Asphalt Cement Adjustment for a total cost of \$10,000

Justification:

This change order is intended to expand the City's 2026 paving program. While two paving contracts were originally advertised, only one contract was ultimately awarded. As a result, this change order proposes utilizing the existing paving contractor to complete additional roadway paving work throughout the City.

CHANGE ORDER SUMMARY

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>4,972,326.50</u>	Original Contract Times: Substantial Completion: <u>October 15, 2026</u> Ready for Final Payment: <u>November 15, 2026</u>
Net Changes from previously approved Change Orders \$ <u>350,000</u>	Net Changes from previously approved Change Orders Substantial Completion: <u>n/a</u> Ready for Final Payment: <u>n/a</u>
Contract Price prior to this Change Order: \$ <u>5,322,326.50</u>	Contract Times prior to this Change Order: Substantial Completion: <u>October 15, 2026</u> Ready for Final Payment: <u>November 15, 2026</u>
Increase (Decrease) of this Change Order: \$ <u>630,000</u>	Increase (Decrease) of this Change Order: Substantial Completion: <u>n/a</u> Ready for Final Payment: <u>n/a</u>
Contract Price with all approved Change Orders: \$ <u>5,952,326.50</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>October 15, 2026</u> Ready for Final Payment: <u>November 15, 2026</u>

RECOMMENDED BY: By: <u></u> Engineer (Authorized Signature) <u>Mark Saunders, P.E.</u> Title: <u>Deputy City Engineer</u> Date: <u>6/23/2026</u>	ACCEPTED BY: By: _____ Owner (Authorized Signature) <u>James W. Donchess</u> Title: <u>Mayor</u> Date: _____	ACCEPTED BY: By: _____ Sunshine Paving Corporation (Authorized Signature) <u></u> <u>PRESIDENT</u> Title: _____ Date: <u>6-23-26</u>
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City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-011

TO: Mayor Donchess
Finance Committee

SUBJECT: 2026 Sewer & Drainage Rehabilitation in the amount not to exceed \$749,395 funded from Bond/ 81- Capital Outlay/Improvements

Please see attached communications from Daniel Hudson, City Engineer, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Sewer and drain improvements on Middle Dunstable Rd., Hills Ferry Rd., Dunloggin Rd., and Cypress Lane
Value: \$749,395
Department: 169 Wastewater
Vendor: RWC Enterprises
Fund: Bond/ 81-Capital Outlay/Improvements

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$25,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$25,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bid, IFB0779-060926 was issued and the following bids were received:

Vendor	Location	Amount
RWC Enterprises	Nashua, NH	\$749,395
Crisp Contracting	Nashua, NH	\$754,195
Michelle Baillargeon Construction Services	Claremont, NH	\$960,882.10
N. Granese & Sons, Inc.	Salem, NH	\$1,187,232.25

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson, D Enwright, T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

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

Re: 2026 Sewer & Drain Improvement Project

C. Motion: To approve the award of the construction contract for the 2026 Sewer & Drain Improvement Project to RWC Enterprises of Nashua, NH in the amount not to exceed \$749,395. Funding will be through: 169 Wastewater; Fund: Bond; Activities: Sewer Rehab, Sewer Infrastructure Improvements and CSO Flooding.

Discussion: The 2026 Sewer & Drain Improvement Project looks to improve sewer and drain systems on Middle Dunstable Road, Hills Ferry Road, Dunloggin Road, and 169 Cypress Lane. The improvements include pipeline and structure replacement, and miscellaneous other sewer, drain and roadway trench patching items.

The contract was advertised for bids on May 14, 2026. Four contractors submitted bids on June 13, 2026 as listed below:

RWC Enterprises of Nashua, NH	\$749,395.00
Crisp Contracting of Nashua, NH	\$754,195.00
Michelle Baillargeon Construction Services of Claremont, NH	\$960,882.10
N. Granese & Sons, Inc. of Salem, MA	\$1,187,232.25

RWC Enterprises of Nashua, NH at a bid price of \$749,395 is the qualified low bidder. RWC Enterprises has successfully completed projects of similar size for the City of Nashua in previous years.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____ in the year **2026** by and between the City of Nashua, New Hampshire (hereinafter called OWNER) and RWC Enterprises and its successors, transferees and assignees together hereinafter called CONTRACTOR).

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

ARTICLE 1 - WORK

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

ARTICLE 2 - THE PROJECT

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

2026 Sewer & Drain Improvement Project consists of sewer and drain system improvements on Middle Dunstable Road, Hills Ferry Road, Dunloggin Road, and 167 Cypress Lane includes pipeline and structure replacement, and miscellaneous other sewer, drain and roadway trench patching items.

ARTICLE 3 - ENGINEER

3.01 Daniel Hudson, PE
City Engineer
Division of Public Works
Engineering Department
848 West Hollis Street
Nashua, NH 03062

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

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Interim Milestones, and Substantial Completion and Final Payment*

- 100 percent of the contract shall be substantially complete by **November 1, 2026**.
- 100 percent of the contract shall be finally complete by **May 30, 2027**.

Schedule Limitation and Interim Milestones - 167 Cypress Lane and 3 Chinook Road:

The work at 167 Cypress lane and 3 Chinook Road shall not be started until a Right of Entry Agreement has been obtained from the homeowner. It is expected that the Agreements will be obtained by **July 15, 2026**.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **ONE THOUSAND TWO HUNDRED EIGHTY dollars (\$1,280)** for each working day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **ONE THOUSAND TWO HUNDRED EIGHTY dollars (\$1,280)** for each working day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

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

ARTICLE 5 - CONTRACT PRICE

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

<u>SEVEN HUNDRED FORTY-NINE THOUSAND THREE HUNDRED NINETY-FIVE DOLLARS</u>	<u>(\$749,395)</u>
---	---------------------------

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

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.00 Submittal and Processing of Payments

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

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

➤ Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

➤ Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

6.02 Progress Payments; Retainage

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

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

1. The OWNER will establish an escrow account in the bank of the OWNER'S choosing. The account will be established such that interest on the principal will be paid to the CONTRACTOR. The principal will be the accumulated retainage paid into the account by the OWNER. The principal will be held by the bank, available only to the OWNER, until termination of the contract.
2. Until the work is 50% complete, as determined by the ENGINEER, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.
3. After the work is 50% complete, and provided the CONTRACTOR has satisfied the ENGINEER in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.

6.03 Final Payment

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

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

1. This Agreement signed by the OWNER and CONTRACTOR, including the General Terms and Conditions;
2. Contract Drawings entitled **"2026 Sewer & Drain Improvement Project" dated May 12, 2026;**
3. Supplementary Conditions;
4. Technical Specifications;
5. Bid Form and Schedule of Values submitted **June 9, 2026**
6. Payment and Performance Bonds and Insurance Certificate;
7. Notice of Award;
8. Written change orders for minor changes in the WORK issued after execution of this Agreement; and
9. Fully Executed OWNER Purchase Order

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

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

9.02. *Assignment of Contract*

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

9.03 *Successors and Assigns*

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

9.04 *Severability*

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

9.05 Choice of Law and Venue

A. This agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

<u>Address for Giving Notices to Owner:</u>	<u>Address for Giving Notices to Contractor:</u>
Daniel Hudson, P.E., City Engineer	Robert Champagne, Owner
Division of Public Works	RWC Enterprises
Engineering Department	P.O. Box 3721
848 West Hollis Street	Nashua, NH 03061
Nashua, NH 03062	(603) 765-5087
Email: HUDSOND@NASHUANH.GOV	Email: RWCexc@gmail.com

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

CITY OF NASHUA – OWNER

James W. Donchess, Mayor City of Nashua

Date: _____

CONTRACTOR:

By: _____
(Authorized Representative)

Print Name: _____

Date: _____

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

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

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

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

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

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

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

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

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications, the Drawings and the Purchases Order as the same are more

specifically identified in the Agreement, together with all Written Amendments, Change Orders, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date Of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.
29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.
30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.
31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
32. *PCB's*--Polychlorinated biphenyls.
33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the contract Documents.
35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.
38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.
41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.
43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.
45. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
47. *Unit Price Work*--Work to be paid for on the basis of unit prices.
48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided in the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
49. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonENGINEERING or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

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

B. Day

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

C. Defective

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

D. Furnish, Install, Perform, Provide

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

A. CONTRACTOR’s *Review of Contract Documents*: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable

field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

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

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and
3. A preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

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

2.06 Preconstruction Conference

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

2.07 Initial Acceptance of Schedules

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

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.
2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.
3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.
- C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 Reference Standards

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Document.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.
2. In case of discrepancy, calculated dimensions will govern over scaled dimensions, Drawings will govern over Standard Specifications, and Construction Specifications will govern over both Drawings and Standard Specifications. The CONTRACTOR shall take no advantage of any apparent error or omission in the Drawings or Construction Specifications, and the ENGINEER will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

B. Resolving Discrepancies

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

- a. The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
- b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

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

3.05 Reuse of Documents

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

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

4.01 Availability of Lands

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

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

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

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

copies of any agreements between the CONTRACTOR and the property OWNER's concerning such protection or disposition.

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

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

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

4.02 Subsurface and Physical Conditions

A. Reports and Drawings:

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

B. Limited Reliance by CONTRACTOR on Technical Data Authorized:

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

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

C. Potential for Hazardous Materials:

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

4.03 Differing Subsurface or Physical Conditions

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

1. Is of such a nature as to establish that any “technical data” on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. Is of such a nature as to require a change in the Contract Documents; or
3. Differs materially from that shown or indicated in the Contract Documents; or
4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must meet any one or more of the categories described in paragraph 4.03.A; and
 - b. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.
2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and Contiguous areas required by the Bidding

Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

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

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

4.04 *Underground Facilities*

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the OWNER's of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and
2. The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. Reviewing and checking all such information and data,
 - b. Locating all Underground Facilities shown or indicated in the Contract Documents.
 - c. Coordination of the Work with the OWNER's of such Underground Facilities, including OWNER, during construction, and
 - d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A). identify the OWNER of such Underground Facility and give written notice to that OWNER and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.
2. If ENGINEER concludes that a change in the Contract Documents is required, a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have

anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

3. CONTRACTOR shall notify the following underground utility locating service at least three full working days prior to beginning work: **Dig Safe System, Inc. DIAL 811.**

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

<u>Electricity</u> – Eversource	(800) 662-7764
<u>Natural Gas</u> – Liberty Utilities	(603) 222-3705
<u>Water</u> – Pennichuck Water Works	(603) 882-5191
<u>Telephone</u> –Consolidated Communications	(603) 645-3500
<u>Cable TV</u> – Comcast	(888) 633-4266
<u>Fire Alarm Cable</u> – Nashua Fire Department	(603) 594-3641

4. At points where the CONTRACTOR's operations are adjacent to public and private utilities, CONTRACTOR shall not commence work until CONTRACTOR has made all arrangements necessary for the protection of utilities.

5. CONTRACTOR shall coordinate and cooperate with the OWNER's of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

4.05 Reference Points

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

4.06 Hazardous Environmental Condition at Site

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

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

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

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

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

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

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

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefore as provided in paragraph 10.05.

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

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

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

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

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

5.02 *Licenses Sureties and Insurers*

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

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

5.03 *Certificates of Insurance*

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

5.04 *CONTRACTOR's Liability Insurance*

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

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

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

2. The CONTRACTOR must maintain the following lines of coverage and policy limits for the duration of the contract. Any subcontractors used by the CONTRACTOR are subject to the same coverage and limits and is a subcontractor of the CONTRACTOR and not the OWNER. It is the responsibility of the CONTRACTOR to update Certificates of Insurance during the term of the contract. Provide coverage for not less than the following amounts or greater:

General Liability

\$1,000,000 per Occurrence

\$2,000,000 Aggregate

City of Nashua Additional Insured

Motor Vehicle Liability ***coverage must include all owned, non-owned and hired vehicles.**

\$1,000,000 Combined Single Limit

Automobile Liability

City of Nashua Additional Insured

Workers' Compensation Coverage according to Statute of the State of New Hampshire:

\$100,000 / \$500,000 / \$100,000

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

It is the responsibility of the contractor to submit to the City of Nashua certificates of insurance for all subcontractors prior to the start of the project. It is the responsibility of the contractor to provide the City with updated certificates of insurance for the contractor and all subcontractors 10 days prior to the expiration of coverage. The City may, at any time, order the contractor to stop work, suspend the contract or terminate the contract for non-compliance. All subcontractors are subject to the same insurance requirements as the contractor.

3. Include completed operations insurance;

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

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

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

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

C. CONTRACTOR agrees to maintain all required insurance coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. CONTRACTOR further agrees, if applicable, as a precondition to the

performance of any work under this contract and as a precondition to any obligation of the OWNER to make any payment under this contract to provide the OWNER with a certificate of a qualified insurer.

5.05 *Property Insurance*

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

- ~~1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;~~
- ~~2. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEERS and architects);~~
- ~~3. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that the materials and equipment have been included in an application for payment recommended by ENGINEER; and~~
- ~~4. allow for partial utilization of the Work by OWNER;~~
- ~~5. include testing and startup; and~~
- ~~6. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.~~

B. CONTRACTOR shall be responsible for any deductible or self-insured retention. The risk of loss within the identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions.

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

5.06 *Waiver of Rights*

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

the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

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

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

6.02 Labor; Working Hours

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

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

<i>Allds Street</i>	<i>East Hollis Street</i>
<i>Amherst Street</i>	<i>Henri Burque Highway</i>
<i>Arlington Street</i>	<i>Ledge Street</i>
<i>Bridge Street</i>	<i>Kinsley Street</i>
<i>Broad Street</i>	<i>Main Street</i>
<i>Broad Street Parkway</i>	<i>Main Dunstable Road</i>
<i>Canal Street</i>	<i>Manchester Street</i>
<i>Central Street</i>	<i>Pine Hill Road</i>
<i>Concord Street</i>	<i>Somerset Parkway</i>
<i>D. W. Highway</i>	<i>Spit Brook Road</i>
<i>East Dunstable Road</i>	<i>West Hollis Street</i>

6.03 Services, Materials, and Equipment

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

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

6.04 Progress Schedule

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

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

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

6.05 Substitutes and "Or-Equals"

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

1. "Or-Equal" Items:

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

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

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

2. Substitute Items

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

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

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

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

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

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

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

E. ENGINEER's Cost Reimbursement: ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in

making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

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

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

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

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

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER,

ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

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

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

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

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

G. Workers' Compensation Coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

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

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

B. Removal of Debris During performance of the Work:

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

C. Cleaning:

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

D. Loading Structures:

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

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

6.12 Record Documents

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

B CONTRACTOR shall mark up one set of paper prints to show the As-built conditions. They shall include all the information shown on the Contract Drawings and a record of all deviations, modifications, or changes from those Drawings, however minor, which were incorporated in the Work, all additional work not appearing on the Contract Drawings and all changes which are made after final inspection of the Contract Work. These As-built marked prints shall be kept current and available on the job site at all times. All changes from the Contract Drawings which are made in the Work or additional information which might be uncovered in the course of construction shall be accurately and

neatly recorded as they occur by means of details and notes. No construction work shall be concealed until it has been inspected, approved, and recorded. The As-built marked prints will be jointly inspected for accuracy and completeness by the ENGINEER'S representative and a responsible representative of the CONTRACTOR prior to submission of the monthly pay estimate. Failure to keep the As-built marked prints on a current basis shall be sufficient justification to suspend pay estimates. The drawings shall show the following information, but not be limited to:

1. The location of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions of permanent features.
2. The location and identification of all surface installations within 100 feet of the construction work.
3. The location and dimensions of any changes within the building or structure.
4. Correct grade or alignment of roads, structures, or utilities if any changes were made from Contract Drawings.
5. Correct elevations if changes were made in site grading.
6. Changes in details or design or additional information obtained from working drawings specified to be prepared or furnished by the CONTRACTOR including but not limited to fabrication, erection, installation plans and placing details, pipe sizes, insulation material, dimensions or equipment foundations, etc.
7. The topography and grades of all drainage installed or affected as a part of the Work.
8. All changes or modifications which result from the final inspection.

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

6.13 Safety and Protection

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

1. All persons on the Site or who may be affected by the Work;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNER of adjacent property and of Underground Facilities and other utility Owner's when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage

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

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

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

E. Protection of Utilities: The CONTRACTOR shall verify all utility locations prior to the start of construction. This shall include, but not necessarily limited to: irrigation and drainage ditches, culverts, water lines, sewer lines, telephone cables, cable television, gas lines and electric lines. Prior to the start of construction the CONTRACTOR shall call Dig Safe System, Inc. Dial 811 (two full working days' notice required). The failure of any utility to subscribe to DIGS shall not relieve the CONTRACTOR from the responsibility of protection of that utility on the site. Any physical structure (i.e. curbs, sidewalks, paving, buildings, landscape improvements, utilities, etc., damaged by the CONTRACTOR shall be repaired or replaced in a condition equal to or better than the condition prior to the damage. Such repair or replacement shall be accomplished at the CONTRACTOR's expense without additional compensation from the OWNER.

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

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER

prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, Change Order will be issued.

6.17 *Shop drawings and Samples*

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

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

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

D. *Submittal Procedures*

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

- a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
- c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and
- d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop drawings and Samples and with the requirements of the Work and the Contract Documents.

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

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

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

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

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

F. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

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

6.19 *CONTRACTOR's General Warranty and Guarantee*

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

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

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

1. Observations by ENGINEER;
2. Recommendation by ENGINEER or payment by OWNER OF ANY PROGRESS OR FINAL PAYMENT;
3. The issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereof by OWNER;

4. Use or occupancy of the Work or any part thereof by OWNER;
5. Any acceptance by OWNER or any failure to do so;
6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. Any inspection, test, or approval by others; or
8. Any correction of defective Work by OWNER.

6.20 Indemnification

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

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

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

ARTICLE 7 - OTHER WORK

7.01 Related Work at Site

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

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

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility OWNER (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other

work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERS and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERS and other contractors.

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

7.02 Coordination

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

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. The specific matters to be covered by such authority and responsibility will be itemized; and
3. The extent of such authority and responsibilities will be provided.

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

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

8.02 Replacement of ENGINEER

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

8.03 Furnish Data

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

8.04 Pay Promptly When Due

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

8.05 Lands and Easements; Reports and Tests

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

8.06 Insurance

See Article 5.

8.07 Change Orders

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

8.08 Inspections, Tests, and Approvals

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

8.09 Limitations on OWNER's Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

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

8.11 Evidence of Financial Arrangements

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER's Representative

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

9.02 Visits to Site

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

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

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

9.03 Project Representative

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

9.04 Clarifications and Interpretations

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

9.05 Authorized Variations in Work

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

9.06 Rejecting Defective Work

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

9.07 Shop Drawings, Change Orders and Payments

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

- B. In connection with ENGINEER's authority as to change orders, see Articles 10, 11, and 12.
- C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

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

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

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

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

9.10 Limitations on ENGINEER's Authority and Responsibilities

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

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

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

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

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

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

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

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

1. Changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Change Order ; and
3. Changes in the Contract Price and Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

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

10.05 Disputes – Not Insurance Related

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 10 days) after the start

of the event giving rise thereto. Notice of the amount or extent of the dispute, or other matter with supporting data shall be delivered to the ENGINEER, Risk Management Department and the other party to the Contract within 60 days after the start of such event. A dispute for an adjustment in Contract Price shall be prepared in accordance with the provisions in paragraph 12.01.B. A dispute for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each dispute shall be accompanied by claimant's written statement that the adjustment disputed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

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

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

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

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

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

11.01 *Cost of the Work*

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

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

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

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

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

5. Supplemental costs including the following:

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

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

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

6. Rental rates shall be determined as follows:

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

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

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

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

- i. If ordered to use equipment not listed in the aforementioned publications, the ENGINEER will establish a rental rate for such equipment. CONTRACTOR shall furnish cost data that might assist in the establishment of such rental rate.
- ii. Payment will be made for the actual time that such equipment is in operation on the work.
- iii. Authorized standby time for idle equipment shall be paid at 50% of the specified rate, less the estimated operating cost per hour. No markup will be added for overhead and profit.
- iv. Rental rate paid as above provided shall include the cost of fuel, oil, lubrication, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. CONTRACTOR shall provide the ENGINEER with a complete Force Account Equipment Listing for each piece of equipment utilized.
- e. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
- f. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- g. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work, provided such losses and damages have resulted from causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.
- h. The cost of utilities, fuel, and sanitary facilities at the Site.
- i. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.
- j. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim
- k. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

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

3. Any part of CONTRACTOR's capital expense, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

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

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

11.02 Cash Allowances

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

1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

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

11.03 Unit Price Work

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

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

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

12.01 *Change of Contract Price*

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

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

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
3. Where the Work involved is not covered by unit prices contained in the Contract Documents an agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;
 - b. For costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a. is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. No fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and
 - f. When both addition and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e inclusive.

12.02 *Change of Contract Times*

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

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

12.03 Delays beyond CONTRACTOR's Control

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

12.04 Delays within CONTRACTOR's Control

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

12.05 Delays beyond OWNER's and CONTRACTOR's Control

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

12.06 Delay Damages

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

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

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

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

13.01 Notice of Defects

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

13.02 Access to Work

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

13.03 Tests and Inspections

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

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

1. For inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. That costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. As otherwise specifically provided in the Contract Documents.
4. That costs incurred by OWNER due to retesting, re-inspection, or standby time due to unacceptable materials, or workmanship provided by the CONTRACTOR, or due to poor scheduling by the CONTRACTOR of tests or inspections, will be deducted from the payments to the CONTRACTOR. CONTRACTOR shall stop work as necessary to allow for inspections and tests by OWNER and ENGINEER.

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

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

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

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

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

13.04 Uncovering Work

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

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

13.05 OWNER May Stop the Work

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

13.06 Correction or Removal of Defective Work

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

13.07 Correction Period

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

removal and replacement (including but not limited to all costs of repair or replacement work of others) will be paid by CONTRACTOR.

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

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

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

13.08 Acceptance of Defective Work

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

13.09 OWNER May Correct Defective Work

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

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

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

costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. The schedule of values established as provided in paragraph 2.01.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payment

A. Review of Applications.

1. Prior to submittal of Application for Payment to OWNER (but not more often than once a month), the CONTRACTOR shall submit the monthly progress estimate to the ENGINEER for review and approval.

2. ENGINEER will, within 10 working days after receipt of each progress estimate, either indicate in writing a recommendation of payment or indicate in writing ENGINEER's reasons for refusing to recommend payment and return the progress estimate to CONTRACTOR. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

3. ENGINEER's recommendation of any payment requested in a progress estimate will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. The Work has progressed to the point indicated;

b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08 and to any other qualifications stated in the recommendation); and

c. The conditions precedent to CONTRACTOR's being entitled to such payment appears to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

4. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

5. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of

construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

6. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. The Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

B. Applications for Payments.

- 1. CONTRACTOR shall submit to OWNER the ENGINEER recommended Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER. Any request for partial or final payment shall specifically list the work completed. Requests for payment for services performed under this agreement shall be submitted as stipulated in **Article 6 - Payment and Procedures** in the Agreement.
- 2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.
- 3. The amount of retainage with respect to progress payments will be stipulated in the Agreement.

C. Payment Becomes Due

- 1. Not more than 30 days after presentation of the application for payment to OWNER with ENGINEER's recommendation, the amount recommended will become due, and when due will be paid by OWNER to CONTRACTOR.

D. Reduction in Payment.

- 1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- a. Claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling OWNER to a set-off against the amount recommended; or
 - d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.
3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 CONTRACTOR'S Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier

fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application of Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Termination, Abandonment, or Suspension at Will

The OWNER, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the OWNER chooses to terminate, abandon, or suspend all or part of the project, it shall provide CONTRACTOR 10 day's written notice of its intent to do so.

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

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

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

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

15.02 Termination for Cause

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

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

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

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

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

15.03 General Provisions for Termination

Upon termination of the contract, the OWNER may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event CONTRACTOR shall cease conducting business, the OWNER shall have the right to solicit applications for employment from any employee of the CONTRACTOR assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of CONTRACTOR's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within CONTRACTOR's control.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

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

ARTICLE 17 - MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation or, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, by special warranty or guarantee, or by other provisions of the contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, will survive final payment, completion, and an acceptance of the Work or termination or completion of the Agreement.

17.05 Controlling Law

A. This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

17.06 Access to Records

A. At all times during regular business hours, CONTRACTOR shall provide full and free access to the OWNER, ENGINEER, and State of New Hampshire to any books, documents, papers, and records related to the work for the purpose of examination, audit, and duplication. The CONTRACTOR shall maintain all required accounts, records, and books for three years after final completion of the work.

17.07 Road Closures and Traffic Delays

A. Partial or full closure of streets in order to facilitate construction will be permitted, or required by the ENGINEER in accordance with the following:

1. If the CONTRACTOR proposes a closure, the CONTRACTOR notifies the OWNER in writing at least 5 days prior to the proposed closure of his intent to close the road.
2. At least 5 days prior to the proposed closure, the CONTRACTOR shall submit a detour traffic plan for each location being detoured.
3. The CONTRACTOR shall install standard traffic control devices in accordance with the Detour Signage plan provided in the bid documents and the Manual on Uniform Traffic Control Devices (MUTCD.)
4. The detour signage shall be covered when the road closure is not in effect.

B. CONTRACTOR shall notify the following agencies of any traffic delays or road closures three days in advance of the work:

Nashua Police Department:	(603) 594-3500
Nashua Fire Department:	(603) 594-3652
School Bus Garage:	(603) 594-4300
Nashua Solid Waste Department	(603) 589-3410

17.08 Prohibited Interests

A. CONTRACTOR shall not allow any officer or employee of the OWNER to have any indirect or direct interest in this contract or the proceeds of this contract. CONTRACTOR warrants that no officer or employee of the OWNER has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of CONTRACTOR. If any such interest comes to the attention of CONTRACTOR at any time, a full and complete disclosure of the interest shall be immediately made in writing to the OWNER. CONTRACTOR also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. CONTRACTOR further warrants that no person having such an interest shall be employed in the performance of this contract. If OWNER determines that a conflict exists and was not disclosed to the OWNER, it may terminate the contract at will or for cause in accordance with Article 15.02.

B. In the event Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out of or in connection with the procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 9. Upon termination, Contractor shall refund to the City any profits realized under this contract, and Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

C. Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were offered or given, it may terminate the contract at will or for cause in accordance with Article 15.02.

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

City of Nashua, New Hampshire
Division of Public Works
2026 Sewer and Drain Improvement Project
IFB0779-060926 - BID SCHEDULE

Item No.	Quantity	Units	Item Description	Unit Price	Total Price
201.21	2	EA	REMOVE SMALL TREE	1.00	2.00
201.31	5	EA	TREE PRUNING, SMALL TREES	100	500.00
202.31	12	CY	FILL ABANDONED PIPE	300	3600.00
202.5	3	EA	REMOVAL OF CATCH BASINS, DROP INLETS, AND MANHOLES	1.00	3.00
202.8	32	LF	REMOVAL OF FENCE	1.00	32.00
203.2	50	CY	ROCK EXCAVATION	100	5000.00
203.3	100	CY	UNCLASSIFIED EXCAVATION	40	4000
203.43	30	LF	REMOVAL AND DISPOSAL OF ASBESTOS (ACM) PIPE, 0-24" DIAMETER	100	3000
206.191	4	EA	TEST PIT 0'-9' DEPTH	500	2000
206.192	1	EA	TEST PIT >9' TO 15' DEPTH	1,000	1,000.00
209.11	100	CY	GRANULAR BACKFILL (Graded Course Aggregate #67)	40	4000
304.3	25	CY	CRUSHED GRAVEL	35	875
403.11	30	TON	HOT BITUMINOUS PAVEMENT, MACHINE METHOD	100	3,000
403.12	30	TON	HOT BITUMINOUS PAVEMENT, HAND METHOD	100	3,000
403.7	250	SY	TEMPORARY PAVEMENT PATCH, RESIDENTIAL STREETS	72	18,000
403.71	250	SY	PERMANENT PAVEMENT PATCH, RESIDENTIAL STREETS	70	17,500
403.75	600	SY	TEMPORARY PAVEMENT PATCH, ARTERIAL STREETS	90	54,000
403.76	600	SY	PERMANENT PAVEMENT PATCH, ARTERIAL STREETS	80	48,000
403.8	380	SY	DRIVEWAY PAVEMENT RECONSTRUCTION	60	22,800
417.02	380	SY	COLD PLANIG BITUMINOUS SURFACES (2-Inch Depth)	20	7600
583.3	20	CY	RIPRAP TYPE III	50	1000
593.213	50	SY	GEOTEXTILE, SEPARATION CLASS I SLIT FILAMENT, WOVEN (Mirafi 600X)	2.00	100
603.84212	80	LF	12" POLYPROPYLENE (PP) PIPE	200	16,000
603.84218	490	LF	18" POLYPROPYLENE (PP) PIPE	220	107,800
604.184	2	U	CATCH BASINS TYPE B, 4-FOOT DIAMETER (Castings Furnished by City)	7500	15,000
604.19	1	LS	SPECIAL CATCH BASIN INCLUDING GRATE (CHINOOK ROAD)	12,000	12,000
604.324	7	U	DRAINAGE MANHOLES, 4-FOOT DIAMETER (Castings Furnished by City)	6500	45,500
604.8112	1	EA	CORING MANHOLE FOR PIPE SIZES UP TO 12" DIAMETER	2000	2000
				PAGE 1 SUBTOTAL	

BID SCHEDULE - 2026 Sewer and Drain Improvement Project

Item No.	Quantity	Units	Item Description	Unit Price	Total Price
604.8118	1	EA	CORING MANHOLE FOR PIPE SIZES >12" TO 18" DIAMETER	2200	2,200
604.82	4	EA	PLASTIC OIL AND FLOATING DEBRIS TRAP	300	1200
604.83	3	EA	CONNECTING NEW DRAIN TO EXISTING MANHOLE	2000	6000
604.84	5	EA	CONNECTING EXISTING DRAIN TO NEW MANHOLE	2000	10,000
605.58	125	LF	8" PERFORATED CORRUGATED POLYETHYLENE PIPE UNDERDRAIN	125	15,625
607.516	32	LF	WOOD FENCE (STOCKADE), 6'-0" HIGH	25	800
608.12	10	SY	2" BITUMINOUS SIDEWALK	100	1000
609.5	60	LF	RESET GRANITE CURB	60	3600
612.606	30	LF	6" PVC-SDR 35 SEWER SERVICE PIPE (ALL DEPTHS)	110	3300
612.61081	300	LF	8" PVC-SDR 35 SEWER PIPE (0'-9' DEPTH)	200	60,000
612.61082	120	LF	8" PVC-SDR 35 SEWER PIPE (>9' TO 13' DEPTH)	250	30,000
612.6208	4	EA	8" X 6" PVC SEWER SERVICE WYE	500	2,000
613.34	25	VF	SANITARY SEWER MANHOLE, 4' DIAMETER (Castings Furnished by City)	700	17,500
613.511	1	EA	CONNECTING NEW SEWER TO EXISTING MANHOLE	2000	2,000
618.6	1	S	UNIFORMED OFFICERS	\$25,000.00	25,000
618.7	800	HR	FLAGGERS	52	41,600
619.1	1	U	MAINTENANCE OF TRAFFIC	10,000	10,000
619.253	8	UWK	PORTABLE CHANGEABLE MESSAGE SIGN (UNIT WEEK)	400	3,200
628.3	2000	LF	SAWED PAVEMENT	1.00	2,000
632.0104	1200	LF	RETROREFLECTIVE PAINT PAVEMENT. MARKING, 4" LINE	4.00	4,800
645.512	250	LF	COMPOSITE SOCK FOR PERIMETER BERM (12" DIA)	1.00	250
645.533	8	EA	CATCH BASIN INLET PROTECTION	1.00	8.00
646.51	1000	SY	TURF ESTABLISHMENT WITH MULCH, TACKIFIERS AND LOAM	10	10,000
692	1	U	MOBILIZATION (8% Max)	40,000	40,000
900	1	ALLOW	ALLOWANCE FOR UNANTICIPATED HAZARDOUS MATERIALS	\$30,000.00	30,000
1000	1	ALLOW	UTILITY REIMBURSEMENT FOR RELOCATION OF RESIDENTIAL SERVICES	\$30,000.00	30,000
PAGE 2 SUBTOTAL					352,083.

BID SCHEDULE - 2026 Sewer and Drain Improvement Project
IFB0779-060926

SUBTOTAL of Page BS-1: 397,312.⁰⁰

SUBTOTAL of Page BS-2: 352,083.⁰⁰

TOTAL BID PRICE (FIGURES): 749,395.⁰⁰

TOTAL BID PRICE (WORDS)

seven hundred forty nine thousand three hundred
Dollars and
ninety five dollars and ⁰⁰/₁₀₀
Cents

Contractor: RWC Enterprises

Authorized Signature: 

Date: 6/9/26

Address: PO Box 3721

Phone: 603 765 5087

Email Address: Rwcexc@gmail.com



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-012

TO: Mayor Donchess
Finance Committee

SUBJECT: 2026 Sewer & Drainage Rehabilitation Amendment #1 in the amount not to exceed
\$388,000 funded from Bond/ 53- Professional & Technical Services

Please see attached communications from Daniel Hudson, City Engineer, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment #1 for engineering services to provide additional services to support
Crisp Contracting's and RWC's sewer & drain improvements
Value: \$388,000
To Date: \$430,000 Finance Memo #26-114
Department: 169 Wastewater
Vendor: IMEG, Inc.
Fund: Bond/ 53-Professional & Technical Services

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to
its scope of work or so as to increase sums payable to the contractor, without
Finance Committee approval for amendment amounts exceed \$25,000; and
without the Board of Aldermen amounts exceeding \$1,000,000

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your
approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

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

Re: 2026 Sewer & Drainage Rehabilitation Program – Engineering Services

D. Motion: To approve Amendment No. 1 to the engineering services contract with IMEG, Inc. of Nashua, NH in the amount of \$388,000 for professional engineering services for the 2026 Sewer & Drain Rehabilitation Program. Funding will be through Department: 169 Wastewater; Fund: Bond; Activities: Sewer Rehab and CSO Flooding.

Discussion: The Engineering Department manages the City's sewer and drain collection system rehabilitation work, including CCTV, pipe lining, pipe and structures replacement, as well as planning, survey, design, permitting, bidding, construction administration, and field inspection during construction. The effort is significant and requires contracted support, and IMEG, Inc. of Nashua, NH has provided similar services to the City for several years. We are seeking to amend their contract to provide expanded services to cover change order work in Crisp Contracting's 2025 sewer contract and RWC's sewer & drain contract

IMEG has broad experience in sewer and drain work and their current work on the City's paving program makes for seamless coordination of sewer, drain, paving and utility projects.



June 17, 2026

Mr. Daniel Hudson, P.E.
City Engineer
848 West Hollis Street
Nashua, NH 03062

Re: 2026 Sewer & Drainage Rehabilitation Program
Engineering Proposal for Additional Construction Services

Dear Mr. Hudson:

IMEG Consultants Corp (IMEG), formerly Hayner/Swanson, Inc. is pleased submit this proposal in support of a contract amendment for providing construction service relating to the on-going 2026 Sewer and Drainage Rehabilitation Program.

We will perform work as directed by the City and understand that the services provided include full-time inspection of the two current sewer & drain infrastructure projects, preparation of contractor pay requisitions, office support during the construction period, miscellaneous survey services to support construction and as-built plan preparation, and coordination with the City's in house effort to prepare as-built plans.

IMEG will work with City staff in a highly integrated effort. We understand that the services we provide will effectively be performed as an extension of the City Engineering Department. This effort will be similar to services we have provided in support of the City's sewer and drainage infrastructure rehabilitation programs since 2019.

Our work will be performed in support of City staff. Our commitment to flexibility and to consistent and clear communication with the City will be a key to success in this effort, as it has been a key on past projects.

In performing these services, we understand that our efforts will be as directed by the City Engineer. At times, we may perform services which the City's standard General Conditions for construction contracts assign to the "Engineer". We note that performing these duties will not bestow upon us the role and responsibilities of "Engineer" as defined in the construction contract.

When performing construction administration, IMEG will not be given the authority to stop the Contractor's work, nor the authority to order the Contractor to perform work beyond contract limits. If so directed by the City Engineer, we will deliver such orders on the Engineer's behalf. IMEG will not be responsible for safety of the Contractor nor the public. We understand that these responsibilities are the Contractor's responsibilities alone.

Total Contract Amendment Budget:

Summary of Current Contract (P.O. 200517):

Current Contract Amount:	\$430,000.00
Spent thru 5/10/26:	\$219,493.33
Estimate of services from 5/10/26 to thru 6/30/26:	\$99,506.67
<u>Estimate of Services to complete original scope:</u>	<u>\$111,000.00</u>
Estimate Remaining Balance - Original Contract:	\$0.00

Budget for Additional Services:

<u>Summary of Additional Construction Services:</u>	<u>\$388,000.00</u>
(Refer to attached spreadsheet dated 6/17/26)	

<u>Requested Change Order Amount:</u>	<u>\$388,000.00</u>
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<u>Total Contract Amount including requested Change Order:</u>	<u>\$818,000.00</u>
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Note: The balance in our current contract of approximately \$111,000 is anticipated to be used to complete the survey, NHDES permitting submissions and attendance at various meetings for the Phase 1 drainage improvements for projects at New Searles Road and Lund Road that discharge at Salmon Brook.

We understand that the work performed will be as directed and that the tasks and split of work between staff may vary. We will bill only for services performed in accordance with the Fee Schedule in effect at the time that the work is performed.

If you have any questions or comments regarding this proposal, please contact me.

APPROVED BY:

James W. Donchess, Mayor

Dated: _____

Enclosure:

John C. Vancor, P.E.
Project Executive

Current Fee Schedule
Construction Services Spreadsheet 17June26



2026 Sewer & Drainage Improvement Project: Construction Services 17June26

TASK	Paul Hayner PE	Denis Hayner	Branden Lambert PE	Tom Vancor	Survey (Allowance)
	\$250.00	\$150.00	\$180.00	\$150.00	
Full Time Field Observation (26 Weeks @ 50 Hr/Week):		1200			
Office/Field Support/Misc CAD/ Pay Regs/Close Out:	220		180	300	
Project Management:	80				
Survey Support for Design & As-built Plans (Allowance):					\$ 50,000.00
Total Hours:	300	1200	180	300	
Cost:	\$75,000.00	\$180,000.00	\$32,400.00	\$45,000.00	\$ 50,000.00
Subtotal:					\$382,400.00
Reimbursable Expenses:					\$5,600.00
IMEG Fees - Estimate for 2026 Construction Services:					\$388,000.00



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-013

TO: Mayor Donchess
Finance Committee

SUBJECT: 2025 CIPP Main Lining Construction Administration Amendment 1 in the amount not to exceed \$118,935.50 funded from Bond/ 81- Capital Outlay/Improvements

Please see attached communications from Daniel Hudson, City Engineer, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Amendment 2 to expand the construction engineering services for project management, coordination, construction administration and quality control for the CIPP Sewer Main Lining project

Value: \$118,935.50

Department: 169 Wastewater

Vendor: IMEG, Inc.

Fund: Bond/ 81-Capital Outlay/Improvements

Ordinance: Pursuant to § 5-91 Amendment to Contracts- No contract may be amended as to its scope of work or so as to increase sums payable to the contractor, without Finance Committee approval for amendment amounts exceed \$25,000; and without the Board of Aldermen amounts exceeding \$1,000,000

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

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

Re: 2025 CIPP Sewer Main Lining Project - Engineering Services

E. Motion: To approve Amendment No. 1 to the construction engineering services contract for the 2025 CIPP Sewer Main Lining project with IMEG, Inc. of Nashua, NH in an amount of \$118,935.50. Funding will be through Department: 169 Wastewater; Fund: Bond; Activity Sewer Rehab.

Discussion: A Change Order 2 to the 2025 CIPP Sewer Main Lining project with National Water Main Cleaning Co. (NWMCC) was approved to include additional cleaning and closed-circuit television (CCTV) inspection of approximately 82,200 linear feet of sanitary sewer, and installation of approximately 42,300 linear feet of manhole-to-manhole Cured-in-Place-Pipe (CIPP) liner on various residential and arterial streets.

We are seeking to expand IMEG's engineering services contract to assist the City's engineering staff with overall project management, coordination, construction administration, and quality control to ensure the lining is completed properly, meets specifications, and is tracked accurately in the City's GIS.

**AMENDMENT No. 1
TO
CONTRACT FOR PROFESSIONAL SERVICES**

**BETWEEN
CITY OF NASHUA
AND
IMEG**

This Amendment No.1 made the _____ day of **July 2026**, by and between **The City of Nashua, New Hampshire** (hereinafter called OWNER), and **IMEG** (hereinafter called ENGINEER).

WHEREAS, an AGREEMENT was entered into on **April 3, 2025** between the OWNER and ENGINEER, which AGREEMENT is entitled ***“2026 CIPP Main Lining Construction Administration”***.

hereinafter referred to as AGREEMENT.

The AGREEMENT shall be further amended to include this Amendment, a copy of which is attached as **EXHIBIT A**.

<u>CHANGE IN CONTRACT PRICE:</u>	<u>CHANGE IN CONTRACT TIMES:</u>
Original Contract Price \$150,000	Original Contract Times Contract completion date: August 31, 2026
Net changes from previous Amendments \$0	Net change from previous Amendments 0 Days
Contract Price prior to this Amendment \$150,000	Contract Times prior to this Amendment Contract completion date: August 31, 2026
Net Increase (decrease) of this Amendment \$118,935.50	Net Increase (decrease) of this Amendment 132 days
Contract Price with all approved Change Orders \$268,935.50	Contract Times with all approved Change Orders Contract completion date: January 10, 2027

WITNESS WHEREOF, the parties hereto have made and executed this AMENDMENT to said AGREEMENT as of the day and year first above written.

CITY OF NASHUA, NH (signature)

IMEG (signature)

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

John C. Vancor, Project Executive
(Printed Name and Title)

Date

Date

EXHIBIT A



June 16, 2026

Daniel Hudson, P.E.
DPW Engineering
848 West Hollis Street
Nashua, NH 03062

RE; Proposal for Additional Services - Amendment 1
2025 CIPP Sewer Main Lining Project

Dear Mr. Hudson:

IMEG Consultants Corp (IMEG), Formerly Hayner/Swanson, Inc, is pleased to submit this proposal to provide additional professional services in support of the City of Nashua's administration of a contract for CIPP lining of sanitary sewer pipelines. Our services will include coordination with Contractor; participation in contract startup and the preconstruction meeting; monitoring the Contractor's progress; verifying that the Contractor is following contract procedures for updating City GIS with progress; review of CCTV videotapes; preparing recommendations to the City for acceptance of the Contractor's punch list and contract closeout.

We will work with the City in a highly integrated effort. This effort will be similar to services which we have provided to the City under the current contract. At times, we anticipate that we will be the lead for tasks. At other times, we will work in direct support of City staff.

In performing these services, we understand that our efforts will always be as directed by the City Engineer. At times, we may perform services which the City's standard General Conditions for construction contracts assign to the "Engineer". We note that performing these duties will not bestow upon us the role and responsibilities of "Engineer" as defined in the construction contract.

IMEG will not be given the authority to stop the Contractor's work, nor to order the Contractor to perform work beyond contract limits. If so directed by the City Engineer, we will deliver such orders on the City Engineer's behalf.

Total Contract Amendment Budget:

Summary of Current Contract (P.O. 198281):

Current Contract Amount:	\$150,000.00
Spent-to date (thru 6/7/26):	\$88,555.50
<u>Estimate to complete current Contract:</u>	<u>\$30,000.00</u>
Estimated Surplus Balance:	(\$31,444.50)

Budget for Additional Services:

Summary of Additional Services: **\$150,380.00**
(Refer to attached spreadsheet)

Requested Change Order Amount: **\$118,935.50**

We understand that the actual work performed will be as directed and that the task and split of work between staff may vary. We also understand that actual work performed will be only as directed and may be less than the budget presented.

The total Not-to-Exceed Budget will not be exceeded without advance written authorization. Invoices will be based on the work actually performed billed at standard billing rates in effect at the time the services were performed.

We appreciate the opportunity to continue to provide services to the City of Nashua. If you have any questions or comments regarding this proposal, please feel free to contact me.

Sincerely,



John C. Vancor, P.E.
Project Executive
IMEG Consultants Corp

Enclosure: Additional Services Spreadsheet dated 6/16/26



2025 CIPP Sewer Main Lining Project 16June26			
Estimated Budget to Complete Current Contract			
TASK	John Vancor	Thomas Vancor	Engineering Support
	\$250.00	\$150.00	\$145.00
Coordination & Review CCTV		36	
Management & Misc. Eng. Support	10	35	20
Punchlist / Close out	8	64	14
Reimbursable Expenses			
Total Hours:	18	135	34
Cost:	\$4,500.00	\$20,250.00	\$4,930.00
Subtotal:			\$29,680.00
Reimbursable Expenses:			\$320.00
Estimated Budget to Complete Current Project:			\$30,000.00

Estimated Budget for Additional Services			
TASK	John Vancor	Thomas Vancor	Engineering Support
	\$250.00	\$150.00	\$145.00
Coordination & Review CCTV		680	
Management & Misc. Eng. Support	36	120	50
Punchlist / Close out	8	64	14
Total Hours:	44	864	64
Cost:	\$11,000.00	\$129,600.00	\$9,280.00
Subtotal:			\$149,880.00
Reimbursable Expenses:			\$500.00
Estimated Budget for Additional Services:			\$150,380.00



City of Nashua

Purchasing Department
Administrative Services Division
229 Main Street - Nashua, NH 03060

(603) 589-3330
Fax (603) 594-3233

June 24, 2026
Memo #27-014

TO: Mayor Donchess
Finance Committee

SUBJECT: 2026 MS4 Permit Assistance in the amount not to exceed \$149,156 funded from
Wastewater Fund/ 81- Capital Outlay/Improvements

Please see attached communications from Daniel Hudson, City Engineer, dated June 25, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Engineering services for the Municipal Separate Storm Sewer System (MS4) Permit
Value: \$149,156
Department: 169 Wastewater
Vendor: Hazen and Sawyer
Fund: Wastewater Fund/ 81-Capital Outlay/Improvements

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

Division of Public Works: Wastewater, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson
C O'Connor
T Cummings

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 25, 2026

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

Re: Municipal Separate Storm Sewer System (MS4) Permit Assistance

F. Motion: To approve the engineering services contract for tasks required by the EPA MS4 Permit with Hazen and Sawyer, P.C. of Manchester, NH in an amount of \$149,156. Funding will be through Department: 169 Wastewater; Fund: Wastewater; Activity: Stormwater Abatement.

Discussion: The Municipal Separate Storm Sewer System (MS4) Permit, issued by the EPA, authorizes the City to discharge stormwater runoff into local waterways. To maintain compliance with the permit, the EPA requires the City to perform a variety of tasks, including preparing and maintaining program documentation, conducting stormwater outfall sampling, implementing public education and outreach efforts, and submitting annual reports.

For the past several years, Hazen and Sawyer, P.C. (Hazen) has provided professional services to assist the City in meeting these permit requirements. This contract will allow Hazen to continue supporting the City's ongoing MS4 compliance efforts to fulfill EPA permit obligations.



CONTRACT FOR PROFESSIONAL SERVICES

EPA MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) SUPPORT SERVICES

A CONTRACT BETWEEN

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

HAZEN AND SAWYER

and its successors, transferees and assignees (together "Professional Engineer")

NAME AND TITLE OF PROFESSIONAL ENGINEER

1750 ELM STREET, SUITE 402, MANCHESTER, NH 03101

ADDRESS OF PROFESSIONAL ENGINEER

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

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

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

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

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A--General Conditions for Contracts; and

Exhibit B--Hazen and Sawyer Scope of Work Proposal, dated **June 2026**.

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

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

2. WORK TO BE PERFORMED. Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and

required to carry out and perform in accordance with the terms and conditions of the contract the work described.

DESCRIPTION OF WORK:

The work consists of providing engineering and regulatory compliance assistance to support the City of Nashua's MS4 Stormwater Program and maintain compliance with the New Hampshire Phase II Small MS4 General Permit through June 30, 2027. Services include project management and reporting, wet weather outfall screening and sampling oversight, GIS data management, regulatory assistance and permit compliance support, outfall investigations and mapping updates, participation in Stormwater Coalition meetings, preparation of the Year 8 Annual Report, and updates to the City's Stormwater Management Plan.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work by **June 30, 2027** 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. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

4. COMPENSATION. Professional Engineer agrees to perform the work for a total cost not to exceed

ONE HUNDRED FORTY-NINE THOUSAND ONE HUNDRED FIFTY-SIX and 00/100 DOLLARS
(\$149,156)

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

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

➤ Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

➤ Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Professional Engineer agrees to provide the following with each request for payment:

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

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

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

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

CITY OF NASHUA REPRESENTATIVE:

Dan Hudson, PE
City Engineer
City of Nashua – Div. of Public Works
848 West Hollis Street
Nashua, NH 03062

PROFESSIONAL ENGINEER REPRESENTATIVE:

Alberto Angles, Jr., PE
Project Manager
Hazen and Sawyer
1750 Elm Street, Suite 402
Manchester, NH 03062

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

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

City of Nashua, NH (signature)

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

Date



Hazen and Sawyer (signature)

Charles Wilson Associate Vice President
(Printed Name and Title)

6-23-26
Date

EXHIBIT A
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CITY OF NASHUA
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General Terms and Conditions

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

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

1. **DEFINITIONS** Unless otherwise required by the context, "Professional Engineer", and its successors, transferees and assignees (together "Professional Engineer") includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors
2. **PROFESSIONAL ENGINEER STATUS** The parties agree that Professional Engineer shall have the status of and shall perform all work under this contract as a Professional Engineer, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Professional Engineer, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Engineer's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Engineer is not a City of Nashua employee and that there shall be no:
 - (1) Withholding of income taxes by the City of Nashua;
 - (2) Industrial insurance coverage provided by the City of Nashua;
 - (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
 - (4) Participation or contributions by either the Professional Engineer or the City of Nashua to the public employee's retirement system;
 - (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
 - (6) Unemployment compensation coverage provided by the City of Nashua.
3. **STANDARD OF CARE** Professional Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. All work shall be performed with the degree of professional skill, care, diligence, and practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. Professional Engineer shall perform the services in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be

taken off of the project by Professional Engineer without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. **CITY OF NASHUA REPRESENTATIVE** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative. Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Professional Engineer may change the address or representative by giving written notice to the other party.
5. **CHANGES TO SCOPE OF WORK** The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Engineer of the change.

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

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

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

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

8. **TERMINATION OF CONTRACT**

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

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

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

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

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

B. TERMINATION FOR CAUSE This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to Professional Engineer in the event of a failure by Professional Engineer to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner. Professional Engineer shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Engineer may terminate the contract on 10 calendar days written notice if, through

no fault of Professional Engineer, the City of Nashua fails to pay Professional Engineer for 45 days after the date of approval by the City of Nashua of any Application for Payment.

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

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

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

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

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

9. **DISPUTE RESOLUTION** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.
10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Professional Engineer for damages because of hindrances or delays in the progress of the work from any cause, and Professional Engineer agrees to accept in full satisfaction of such hindrances and delays any extension of time to perform services that the City of Nashua may provide.
11. **INSURANCE** Professional Engineer shall carry and maintain in effect during the performance of services under this contract:
- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
 - \$1,000,000 Combined Single Limit Automobile Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
 - \$1,000,000 Profession Liability;
 - and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

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

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

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.

- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Professional Engineer must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Professional Engineer of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Professional Engineer is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

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

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

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

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

15. **COMPLIANCE WITH APPLICABLE LAWS** Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements,

all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. **NONDISCRIMINATION** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Professional Engineer's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

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

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

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

17. **FEDERAL SUBCONTRACTING REQUIREMENTS** If Professional Engineer awards a subcontract under this contract, Professional Engineer, if applicable, shall use the following alternative steps:
- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
 - B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.
 - C. If applicable, Professional Engineer agrees to complete and submit to the City of Nashua a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization

Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. **ENDORSEMENT** Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.
19. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
20. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
21. **DISPOSITION OF CONTRACT MATERIALS** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua. **Professional Engineer may retain one copy of the information produced under this Agreement for archival purposes.**
22. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

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

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

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

23. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.
24. **TAXES** Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
25. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.
26. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

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

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

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

28. **THIRD PARTY INTERESTS AND LIABILITIES** The City of Nashua and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Engineer.
29. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.
30. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.
31. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any

terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. **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

**City of Nashua, NH
MS4 Assistance 2026-2027
Scope of Work for Engineering Services**

This document sets out the scope of services to assist in maintaining Nashua's compliance with the 2017 New Hampshire Phase II Small MS4 General Permit (the Permit) through June 30, 2027. These services are outlined below.

Scope

1. Project Administration, Meetings, and Quality Assurance/Quality Control (Tasks 1.a-1.c)

TASK 1.a Project Management

This subtask includes time required for general project coordination and management, maintenance of project records and documentation, control of budget and schedule, including preparation and submission of work schedules, invoices and monthly progress reports. Monthly progress reports shall outline budget, project and schedule status through all phases of the project. Twelve (12) progress reports are assumed for this task.

Deliverables: One copy of each monthly invoice and progress report.

TASK 1.b Quality Assurance / Quality Control (QA/QC)

The on-going QA/QC plan will be updated to address new milestones, and personnel assigned to the project. The Project Manager will be responsible for developing, tracking and implementing this plan. These QA/QC procedures shall be employed in order to maintain deliverable quality during all phases of the project. These procedures will address the use of quality control reviews, engineering and calculations checking, and other measures necessary to maintain a consistent, complete, high quality and compatible product. A QA/QC review will be conducted on every submittal prior to delivery to the City. Members of in-house staff not associated with the Project will be selected to perform these reviews.

TASK 1.c Meetings

Consultant will prepare for and attend progress meetings when requested by City staff to review project status, and to address the technical aspects of the work and results of field investigations, analyses, and other efforts associated with the project. The Project Manager and the appropriate technical staff will attend these meetings, as needed for the specific agenda. Consultant will issue an agenda prior to each meeting and will also prepare the minutes detailing the topics and discussions of each meeting. Four (4) quarterly meetings are assumed for this task.

Deliverables: Attendance and preparation of agendas for each progress meeting. Preparation and distribution of one copy of the recorded meeting minutes to all participants after each meeting.

City of Nashua, NH
MS4 Assistance 2026-2027
Scope of Work for Engineering Services

2. Wet Weather Outfall Screening and Sampling (Tasks 2.a-2.e)

The permit requires that for all catchments with a minimum of one (1) System Vulnerability Factor (SVF) all outfalls be inspected and sampled under wet weather conditions. SVFs include the following:

- History of SSOs, including, but not limited to, those resulting from wet weather, high water table, or fat/oil/grease blockages;
- Common or twin-invert manholes serving storm and sanitary sewer alignments;
- Common trench construction serving both storm and sanitary sewer alignments;
- Crossings of storm and sanitary sewer alignments where the sanitary system is shallower than the storm drain system;
- Sanitary sewer alignments known or suspected to have been constructed with an underdrain system;
- Inadequate sanitary sewer level of service (LOS) resulting in regular surcharging, customer back-ups, or frequent customer complaints;
- Areas formerly served by combined sewer systems;
- Sanitary sewer infrastructure defects such as leaking service laterals, cracked, broken, or offset sanitary infrastructure, directly piped connections between storm drain and sanitary sewer infrastructure, or other vulnerability factors identified through Inflow/Infiltration Analyses, Sanitary Sewer Evaluation Surveys, or other infrastructure investigations.
- Sewer pump/lift stations, siphons, or known sanitary sewer restrictions where power/equipment failures or blockages could readily result in SSOs;
- Any sanitary sewer and storm drain infrastructure greater than 40 years old;
- Widespread code-required septic system upgrades required at property transfers (indicative of inadequate soils, water table separation, or other physical constraints of the area rather than poor owner maintenance);
- History of multiple Board of Health actions addressing widespread septic system failures (indicative of inadequate soils, water table separation, or other physical constraints of the area rather than poor owner maintenance).

There are 351 outfalls that discharge to jurisdictional waters. 30 outfalls are assumed to be wet weather screened and sampled under this task.

The screening and sampling will be conducted by a separate contractor under the supervision of Hazen. Specifically, Hazen's duties include:

City of Nashua, NH
MS4 Assistance 2026-2027
Scope of Work for Engineering Services

Task 2.a Review System Vulnerability Factors (SVFs) developed previously.

Task 2.b Review the screening and sampling plan proposed by the vendor to confirm that it meets the requirements of the permit.

Task 2.c Supervision of the screening sampling contractor during the screening/sampling period (Spring - Fall) to ensure that weekly screening/sampling goals are met and to mitigate any unforeseen delays. An allowance of \$20,000 has been budgeted for the screening and sampling contractor. Once the allowance is exhausted work will cease. Work to sample outfalls is weather dependent and cannot be guaranteed to be completed under this budget item.

Task 2.d Log screening/sampling data into GIS.

Task 2.e Summarize screening and sampling in a technical memorandum (TM).

Deliverables: Supervision of the screening sampling contractor. Log screening/sampling data into GIS. Provide summary TM.

3. Provide Regulatory Assistance (Tasks 3.a-3.b)

This task includes providing input on regulatory changes including updating MS4 outfalls in Nashua.

Task 3.a Correlate MS4 Outfalls with Permit.

- Review outfalls in NOI and compare them to existing map of outfalls.
- Conduct field investigations to confirm outfalls (7 days of 2 person field work is assumed).
- Make recommendations to add or delete outfalls from permit.
- Update GIS mapping of outfalls.
- Identify follow-up actions arising from outfall modifications including:
 - Dry Weather Screening and Sampling
 - Wet Weather Screening and Sampling.
 - Catchment Delineations

Task 3.b Attend Coalition Meetings (up to 12).

Deliverables: Provide recommendations for follow-up actions arising from outfall modifications. Attend up to 12 Coalition Meetings.

**City of Nashua, NH
MS4 Assistance 2026-2027
Scope of Work for Engineering Services**

4. Annual Reports (Tasks 4.a-4.b)

The Permit requires submit of annual reports that include:

- review of permit compliance
- assessment of selected BMPs.
- status of the any plans for discharges subject to TMDLs or to certain impaired waters
- progress towards achieving the measurable goals and objectives of the six minimum measures

Task 4.a Hazen's duties include assisting the City of Nashua in completing the year 8 annual report using the templates provided by the New Hampshire Stormwater Coalition.

Task 4.b Update Stormwater Management Plan based on revisions in the past year.

Deliverables: Year 8 Annual Report due September 30, 2026, updated SWMP."

Fee: See Attachment A for detailed fee calculations

Total Fee: \$ 149,156 (including screening/sampling sub-consultant)

ATTACHMENT A

**SUMMARY OF LABOR AND COSTS
CITY OF NASHUA, NH
CONTINUED STORMWATER PROGRAM ASSISTANCE
HAZEN AND SAWYER TEAM BUDGET FOR 2026-2027**

Task	Description	Program Manager	Project Manager	Sr. Associate	Associate	Sr. Principal Engineer	Principal Engineer	Asst. Engineer	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
	Rates	\$98.00	\$92.00	\$74.00	\$64.00	\$56.00	\$52.00	\$43.00		OH	178.0%		Profit	10.0%	
1.0	Project Admin, Meetings, and QAQC	16	85	0	6	30	0	40	177	\$13,172	\$23,446	\$36,618		\$3,662	\$40,280
2.0	Wet Weather Outfall Screening and Sampling	12	20	0	0	40	0	94	166	\$9,298	\$16,550	\$25,848		\$2,585	\$28,433
3.0	Provide Regulatory Assistance	2	4	0	0	64	0	174	244	\$11,630	\$20,701	\$32,331		\$3,233	\$35,565
4.0	Annual Report	12	18	12	8		18	50	118	\$7,318	\$13,026	\$20,344		\$2,034	\$22,378
	Totals	42	127	12	14	134	18	358	705	\$41,418	\$73,724	\$115,142	\$0	\$11,514.20	\$126,656

ODCs	\$	2,500
Subs	\$	20,000
Total	\$	149,156
Total less sub	\$	129,156

ATTACHMENT A

**SUMMARY OF LABOR AND COSTS
CITY OF NASHUA, NH
CONTINUED STORMWATER PROGRAM ASSISTANCE
HAZEN AND SAWYER TEAM BUDGET FOR TASK 1 -Continued MS4 Assistance (Tasks 1.a - 1.c)**

Task	Description	Program Manager	Project Manager	Sr. Associate	Associate	Sr. Principal Engineer	Principal Engineer	Asst. Engineer	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
	Rates	\$98.00	\$92.00	\$74.00	\$64.00	\$56.00	\$52.00	\$43.00		OH	178.0%		Profit	10.0%	
1.a	PM	2	60			8		12	82	\$6,680	\$11,890	\$18,570	\$0	\$1,857	\$20,427
1.b	QAQC		4		6				10	\$752	\$1,339	\$2,091		\$209	\$2,300
1.c	Meetings	14	21			22		28	85	\$5,740	\$10,217	\$15,957		\$1,596	\$17,553
	Task C5 Totals	16	85	0	6	30	0	40	177	\$13,172	\$23,446	\$36,618	\$0	\$3,662	\$40,280

ATTACHMENT A

SUMMARY OF LABOR AND COSTS

CITY OF NASHUA, NH

CONTINUED STORMWATER PROGRAM ASSISTANCE

HAZEN AND SAWYER TEAM BUDGET FOR TASK 2 -Continued MS4 Assistance (Tasks 2.a - 2.e)

Task	Description	Program Manager	Project Manager	Sr. Associate	Associate	Sr. Principal Engineer	Principal Engineer	Asst. Engineer	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
	Rates	\$98.00	\$92.00	\$74.00	\$64.00	\$56.00	\$52.00	\$43.00		OH	178.0%		Profit	10.0%	
2.a	System Vulnerability Factor (SVF) Review	2	2			4		12	20	\$1,120	\$1,994	\$3,114	\$0	\$311	\$3,425
2.b	Review Screening/ Sampling Plan	2	4			4		12	22	\$1,304	\$2,321	\$3,625		\$363	\$3,988
2.c	Supervise Vendor		2			4		16	22	\$1,096	\$1,951	\$3,047		\$305	\$3,352
2.d	Enter Results in GIS Database					4		18	22	\$998	\$1,776	\$2,774		\$277	\$3,052
2.e	Draft and Final Report	8	12			24		36	80	\$4,780	\$8,508	\$13,288		\$1,329	\$14,617
Task 2 Totals		12	20	0	0	40	0	94	166	\$9,298	\$16,550	\$25,848	\$0	\$2,585	\$28,433

ATTACHMENT A

**SUMMARY OF LABOR AND COSTS
CITY OF NASHUA, NH
CONTINUED STORMWATER PROGRAM ASSISTANCE
HAZEN AND SAWYER TEAM BUDGET FOR TASK 3 -Continued MS4 Assistance (Task 3.a-3.b)**

Task	Description	Program Manager	Project Manager	Sr. Associate	Associate	Sr. Principal Engineer	Principal Engineer	Asst. Engineer	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
	Rates	\$98.00	\$92.00	\$74.00	\$64.00	\$56.00	\$52.00	\$43.00		OH	178.0%		Profit	10.0%	
3.a	Correlate MS4 Outfalls with Permit	2	4			64		138	208	\$10,082	\$17,946	\$28,028		\$2,803	\$30,831
3.b	Attend Stormwater Coalition Meetings							36	36	\$1,548	\$2,755	\$4,303		\$430	\$4,734
Task 4 Totals		2	4	0	0	64	0	174	244	\$11,630	\$20,701	\$32,331	\$0	\$3,233	\$35,565

ATTACHMENT A

Task	ODCs		Subcontractors		
	Lab	Travel	Sampling		
1.0 PM			\$ -	\$ -	
2.0 WW Screening TM	\$ 2,000.00		\$ 20,000.00	\$ 22,000.00	30 outfalls @\$20,000 Assume \$2000 for lab services
3.0 Correlate MS4 Outfalls		\$ 500.00	\$ -	\$ 500.00	7 trips, 20 mi e/w, 2 ppl, plus 40 around town @ \$0.725/mi
4.0 Annual Reports (2)			\$ -	\$ -	hardcopies not needed
	\$ 2,000.00	\$ 500.00	\$ 20,000.00	\$ 22,500.00	



RESOLUTION

AUTHORIZING AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT AND FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT WITH LANSING MELBOURNE GROUP, LLC REGARDING “NIMCO” SITE

CITY OF NASHUA

In the Year Two Thousand and Twenty-Six

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into an Amended and Restated Master Development Agreement and Fourth Amendment to Purchase and Sale Agreement with Lansing Melbourne Group, LLC Regarding “Nimco” Site in substantially the same form as the attached.

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents and take all necessary actions contemplated by the Amended and Restated Master Development Agreement and Fourth Amendment to Purchase and Sale Agreement or required to effectuate the same.

LEGISLATIVE YEAR 2026

RESOLUTION:

R-26-047

PURPOSE:

Authorizing Amended and Restated Master Development Agreement and Fourth Amendment to Purchase and Sale Agreement with Lansing Melbourne Group, LLC Regarding “Nimco” Site

ENDORSERS:

Mayor Jim Donchess

**COMMITTEE
ASSIGNMENT:**

**Finance Committee
Planning Board**

FISCAL NOTE:

Purchase Price of \$35,000 per unit for Phase I with no less than 135 units and, if the option is exercised, \$25,000 per unit for Phase 2 with no less than 107 units, subject to a demolition credit in the amount of \$700,000 and a credit for the actual out-of-pocket hard and soft costs incurred by Developer in connection with the design and construction of the dog park improvements up to a maximum amount of \$1,200,000.00, and Option Payments described in 2.11 of Master Developer Agreement.

ANALYSIS

This resolution authorizes the Mayor to enter into an Amended and Restated Master Development Agreement for the property located at 1 Pine Street Extension (Lot 77-30), 3 Pine Street Extension (Lot 77-2A), and “L” Pine Street (Lot 77-7), (the “Nimco Site”). R-25-168, passed June 10, 2025, authorized the original Master Development Agreement between the parties relative to the Nimco Site.

This resolution authorizes the Mayor to enter into a Fourth Amendment to the Purchase and Sale Agreement for the Nimco Site. R-24-021, passed April 9, 2024, authorized the initial Purchase and Sale of the Nimco Site.

Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen . . . on the purchase and sale of any land by the city.”

Approved as to form:

Office of Corporation Counsel

By: /s/Celia K. Leonard

Date: June 17, 2026

AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT
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**AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT**

BY AND BETWEEN

LANSING MELBOURNE GROUP, LLC,
a Florida limited liability company

AND

CITY OF NASHUA, NEW HAMPSHIRE

Effective Date:

This Amended and Restated Master Development Agreement (this “Agreement”) is made and entered into as of _____, 2026 (the “Effective Date”), between LANSING MELBOURNE GROUP, LLC, a Florida limited liability company (“Developer”), and the CITY OF NASHUA, NEW HAMPSHIRE, a New Hampshire municipal corporation (“City”). Developer and City are sometimes referred to in this Agreement collectively as the “Parties” and singularly as a “Party”.

ARTICLE I: RECITALS

1.1 City is a duly organized New Hampshire municipal, having its principal office located at Nashua City Hall, 229 Main Street, Nashua, NH 03061.

1.2 Developer is a limited liability company having its principal United States offices located at 101 NE 3rd Avenue Suite 1500 FORT LAUDERDALE, FL 33301, is experienced at developing real estate in New Hampshire and elsewhere, within the public-private context and otherwise, and is authorized to do business in New Hampshire.

1.3 City strongly supports increased economic development to provide additional jobs for residents of Nashua and the region, to expand business within the City, and to develop a healthy robust economy through the means of downtown redevelopment and investment.

1.4 The City released a request for proposals on May 1, 2023 (the “RFP”) soliciting proposals from real estate developers for development of an approximately 2.9-acre parcel of real property owned by the City and more particularly described on **Exhibit A** attached and incorporated into this Agreement (the “Property” or the “NIMCO Site”)

into a mixed use development project (the “Project”) as depicted in conceptual form on the “Development Plan” (as defined in Section 2.5 below), which Development Plan is attached and incorporated into this Agreement as **Exhibit B**. The vision of the RFP, Development Plan and Project is to accommodate the growing housing, commercial and recreational needs of the City. The RFP is a matter of public record.

1.5 Developer submitted its response to RFP on June 29, 2023 (the “Proposal”), and after being selected by the City has worked with the City to develop a mutually agreeable Project concept.

1.6 As authorized by R-25-168, the City entered into the Master Development Agreement with Developer dated June 10, 2025. Said Agreement contemplated a one phase, 240 multifamily unit project. Developer revised its plans and now intends to build out the Project with two phases as further described below.

1.7 Subject to review and final approval of the Development Plan and the Project, Developer intends to develop the Project to include approximately:

- (a) The Project shall consist of a phased mixed-income multifamily residential development containing, in the aggregate, approximately two hundred forty-two (242) dwelling units, together with associated parking, access drives, internal roadways, utility improvements, landscaping, amenity areas, public improvements, commercial space, and related site improvements, all as may be further refined through final design, engineering, market conditions, permitting, and approvals.
- (b) The Project is presently anticipated to be developed in two phases as follows:
 - (i) Phase 1: Approximately one hundred thirty-five (135) multifamily dwelling units, together with approximately one hundred fifty-five (155) parking spaces, including structured, podium, deck, surface and/or other parking configurations, plus associated sitework, utilities, access improvements, and certain initial public improvements.
 - (ii) Phase 2: Approximately one hundred seven (107) multifamily dwelling units, together with approximately ninety-nine (99) parking spaces, including structured, podium, deck, surface and/or other parking configurations, plus associated sitework, utilities, access improvements, and completion of remaining contemplated Project improvements.
- (c) A to-be-determined amount of commercial space.
- (d) Eighty percent (80%) of the final completed dwelling units in Phase 1 shall be rented at market rate, and twenty percent (20%) of the final completed dwelling units in Phase 1 shall be rented only to households earning no more than eighty percent (80%) of Area Median Family Income, with at least one (1) unit restricted

at sixty percent (60%) of Area Median Family Income, pursuant to applicable HUD income limits for the Nashua, New Hampshire HUD Metro Fair Market Rent Area, as updated annually.

- (e) Eighty percent (80%) of the final completed dwelling units in Phase 2 shall be rented at market rate, and twenty percent (20%) of the final completed dwelling units in Phase 2 shall be rented only to households earning no more than eighty percent (80%) of Area Median Family Income, with at least one (1) unit restricted at sixty percent (60%) of Area Median Family Income, pursuant to applicable HUD income limits for the Nashua, New Hampshire HUD Metro Fair Market Rent Area, as updated annually.
- (f) Certain public improvements to serve the Project and the public, subject to final design, engineering, permitting, funding availability, and City approvals, are anticipated to include:
 - (i) A dog park as further described in Section 2.13.D, below, to be delivered prior to the first occupancy permit with Phase 1, generally consistent with the City's Millyard Dog Park Feasibility Study Final Report dated October 21, 2021, as may be reasonably modified through final design and approvals (reference is made to Section 2.13 D, below);
 - (ii) A public recreational component, along the Nashua River within the Property boundary, including pedestrian connection elements based on the Nashua Riverfront Master Plan 2017, as further described in Section 2.13.B, below;
 - (iii) The inclusion and construction of the Spine Road and Curve area, together with such public access easements, pedestrian connectivity improvements; i.e. event street, and related infrastructure enhancements as may be required or mutually agreed upon through the Site Plan and City approval process, with the shared goal of improving connections between Veterans Memorial Parkway, Pine Street Extension, Mine Falls Park, and adjacent pedestrian crossings; and
 - (iv) Related walkways, lighting, seating, landscaping, drainage, and supporting site improvements, together with such parking arrangements as may be mutually agreed upon by the parties,
- (g) The parties acknowledge that the Project may be developed and conveyed in separate phases and/or parcels. Accordingly, transfers of City-owned land may occur in separate closings corresponding to each phase or parcel, all as more particularly set forth in the Purchase and Sale Agreement, as amended from time to time. Such phased conveyances shall remain subject to satisfaction of the applicable conditions precedent for such phase or parcel, including approval of applicable site plans, issuance of building permits, financing commitments, and other reasonable evidence of Developer's readiness to commence construction.

- (h) The parties acknowledge that certain portions of the Property may be conveyed, leased, licensed, subject to easement rights, or otherwise made available to Developer and/or its affiliates pursuant to separate agreements to facilitate phased development, public improvements, access, parking, infrastructure, and implementation of the Project, all on terms to be mutually agreed upon by the parties.

1.8 The City commissioned a Phase I Environmental Site Assessment for the Property which was prepared by Cedere Associates, Inc. and delivered to City on February 12, 2021 (the “Phase I”) and City also commissioned a Phase II Environmental Assessment for the Property which was prepared by Cedere Associates, Inc. and delivered to City in draft form on October 13, 2023 (the “Phase II”). Developer acknowledges receiving the Phase I and Phase II on or before the Effective Date. Developer also acknowledges receipt of the Millyard Substation Remedial Action Implementation Report and the Dog Park Study on or before the Effective Date.

1.9 The Project is depicted more specifically on the “Project Development Plan” (defined below).

1.10 As authorized by R-24-021, the City entered into a Purchase and Sale Agreement with Developer dated April 24, 2024 with respect to the Property, as amended by First Amendment to Purchase and Sale Agreement dated November 8, 2024, by Second Amendment to Purchase and Sale Agreement dated December 16, 2024, and by Third Amendment to Purchase and Sale Agreement dated April 1, 2025 (“PSA”). The PSA is attached as **Exhibit D**. The Parties anticipate a Fourth Amendment to Purchase and Sale Agreement to reflect the terms of this Agreement.

1.11 The purpose of this Agreement is to facilitate the development and construction of the Project in a way that results most effectively in the public benefits intended for the City and the private benefits intended for the Developer. The development and construction of the Project requires a major investment by the Developer in facilities and on-site improvements, and substantial commitment of public and private resources to achieve the benefits of the Project for Developer and City.

1.12 The general benefits to be received by City from the implementation of the Project include, without limitation:

- a) Realization and implementation of the Development Plan;
- b) Establishment of integrated site plans, urban design elements including uniform engineering, landscapes and architecture that contribute to the revitalization of the NIMCO site and downtown Nashua; and
- c) Provision of housing opportunities, promotion of commercial activity, providing parking and enhancement of the public realm in downtown Nashua.

d) The Project is intended to further and complement the City's broader vision for the Millyard district and surrounding area through the creation of a cohesive mixed-use environment incorporating housing, public improvements, connectivity, pedestrian-oriented design, infrastructure enhancements, public gathering areas, recreational components, and related improvements intended to support continued revitalization and long-term economic development within the Millyard area.

1.13 The general benefits to be received by Developer from the implementation of the Project include without limitation, integration of site plans, urban design elements land uses, architecture, site engineering, landscape architecture, and mitigation measures over the Property;

1.14 In exchange for these benefits to City and Developer, City and Developer desire to proceed with the Project in accordance with the terms and conditions contained in this Agreement, subject to any amendments to this Agreement made in accordance with this Agreement.

NOW, THEREFORE, based upon the terms and conditions set forth in this Agreement and in consideration of the mutual promises and assurances provided in this Agreement, City and Developer hereby agree that the Recitals as stated above are incorporated herein and made a part of this Agreement and the following terms:

ARTICLE II: TERMS

2.1 Purchase of Property. The purchase and sale of the Property shall be governed by the PSA. In the event of any conflict between the PSA and this Agreement, this Agreement shall control.

2.2 Performance of Governmental Functions. The terms of this Agreement regarding the design and construction of the Project and the role of City in the Project are independent of any obligations binding upon City or Developer pursuant to applicable laws and ordinances. In no event will any approvals given by City pursuant to the terms of this Agreement constitute the performance by City of any review or issuance of any permits, approvals or licenses that it is obligated to conduct or consider pursuant to any law, or ordinance or both. Nothing in this Agreement or any approvals or consents by City in connection with this Agreement will in any way stop, limit or impair City from exercising or performing any regulatory, policing or other governmental function with respect to either Party, including, but not limited to, the review, approval and issuance by City of applications, approvals, permits and licenses regarding the Project pursuant to any laws and ordinances. City will, to the extent reasonably appropriate and permitted by applicable laws and ordinances, facilitate Developer's submissions, requests and applications pursuant to the applicable laws and ordinances governing the Project; provided Developer's submissions, requests and applications are complete, include all necessary fees and are otherwise compliant with applicable laws and ordinances.

2.3 Property Documents. The City represents to Developer and Developer agrees that City has delivered the following documents and information regarding the Property to Developer (collectively, the “Property Documents”):

- a) The title reports for the NIMCO Site listed in **Exhibit 2.3** attached hereto.
- b) Phase I Environmental Site Assessment prepared by Credere Associates, LLC and dated March 20, 2024.
- c) Phase II Environmental Site Assessment prepared by Credere Associates, LLC and dated August 1, 2024.
- d) Millyard Substation Remedial Action Implementation Report prepared by GZA GeoEnvironmental, Inc. dated October 13, 2023.

City makes no representation or warranty regarding the currency or accuracy of any of the Property Documents. Developer acknowledges that its receipt of the Property Documents does not in any way relieve Developer from conducting its own required surveying; title examination; architectural, engineering, environmental, topographical, geological, soil, developmental, inspections and other due diligence reasonably sufficient to determine the condition of the Property and suitability of the Property for Developer’s intended use(s) (collectively, the “Inspections”).

2.4 Due Diligence Regarding Property. Due Diligence under this Agreement shall be governed by the terms of the PSA.

2.5 Project Development Plan.

a) The comprehensive development plans which are generally consistent with the description of the City’s vision and objectives for the Project as described in the RFP and this Agreement (the “Development Plan”) shall include a general description of all proposed development of the Project and required infrastructure improvements, including, but not limited to, its design and construction. The Development Plan is attached as **Exhibit B**. The Development Plan shall also include the following items as condition precedent to closing:

- (i) Any modifications to the Development Plan;
- (ii) All architectural and engineering designs of the Project sufficient to obtain building permits
- (iii) All construction-related requirements (such as soil conditions and environmental constraints consistent with the Development Plan).

b) The Development Plan is subject to the City's land use and development approval process.

c) The City, together with its duly authorized agents and employees, may inspect and monitor the Project and the work performed on the Project at any time with commercially reasonable prior notice to Developer; provided that the City, and its duly authorized agents and employees shall follow Developer's reasonable safety regulations.

2.6 Schedule and Order of Development. Developer shall administer all aspects of the development of the Project subject to all applicable laws, rules and regulations, including the 2005 Land Use Code requirements of the City and based upon the construction schedule as follows:

Developer shall develop the Project at its sole expense, except as otherwise described and agreed to in this Agreement, in accordance with the Development Plan consistent with the architecture, streetscape and the character of the adjacent area and downtown Nashua and shall conform to the terms of the Development Plan. Developer will, during the design process or design phase of the development of the Project, develop and implement a design review process that will provide City and its professional staff the right to review and approve, reject or suggest modifications to the Development Plan, including regularly scheduled meetings in accordance with the construction schedule, to update City on Developer's progress of the Project. Developer will provide City with a construction schedule no later than 30 days prior to closing and keep the City apprised of material changes to such schedule. Developer shall conduct scheduled meetings on a monthly basis to keep City apprised of the progress of development of the Project. The meetings shall include the Developer, City representatives and the specialty consultants (if necessary or advisable). Developer shall supply City with a copy of the as built survey when the Project is complete. City may (but will not be required to) also attend Developer's meetings with Developer's engineering, architecture and project planning teams and provide input. Subject to the insurance requirements in section 4.3, Developer may access the Property to conduct demolition on and after the Effective Date.

2.7 Development Standards.

a) Developer shall perform the work in accordance with the standard of care and expertise normally employed by development firms, consultants and contractors performing similar services in metropolitan areas in New Hampshire, and all duties under this Agreement shall be measured and interpreted in accordance with such standard of performance.

b) Developer hereby warrants to City that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with the requirements of the Development Plan. Developer hereby represents, warrants, and covenants that neither it nor its affiliates shall file a mechanic's lien, materialmen's lien, or other lien against any assets of City, and hereby waives and releases any right it may have or may hereafter

acquire to file a lien against the any assets of City. Developer shall indemnify and hold harmless City from any losses, damages and liabilities to the City as a result of a breach of this provision.

c) Developer shall pay all fees levied by the City or any other governmental entity, including, but not limited to, all tap fees, water & sewer fees, and permit fees. Developer shall plan for all utility services required for the Project and negotiate all necessary agreements with the appropriate municipal authorities and utility companies related to access, traffic, utilities, zoning and other design and construction elements pertaining to the Project. Developer shall obtain and pay for all construction-related permits and all certificates of occupancy. City shall cooperate with Developer as is reasonably necessary for Developer to obtain such approvals, permits and certificates of occupancy or completion subject to section 2.2 of this Agreement.

d) Developer shall apply for and maintain in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project and comply with all the terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project.

e) Developer and the City shall apply and build out the Project according to the 2005 Land Use Code as approved by O-04-19, as amended. The Parties and the Project shall not be governed by the form-based Land Use Code Update, if adopted.

2.9 Demolition. Developer has demolished the building on the Property. City will credit Seven Hundred Thousand Dollars (\$700,000.00) of the Purchase Price for Phase 1 as defined in the PSA for such demolition. In addition, City will defer \$1,000,000.00 of the Purchase Price (the “Deferred Amount”), which deferral will be evidenced by a promissory note and mortgage on the Property from Developer to City to be signed on or before the Closing Date. The Deferred Amount and the mortgage securing the Deferred Amount will be subordinate and junior to any financing placed on the Project and Property by Developer until such time as the first capital event, which for purposes of this Agreement will be the first of the sale or refinancing of the Property or the Project, in whole or in part, but in any event the Deferred Amount shall be repaid in full to the City no later than thirty-six (36) months after issuance of the last Certificate of Occupancy for the **Phase 1 of the Project**. City agrees to enter any further documentation reasonably required by Developer’s lenders and financiers to evidence the subordination of the Deferred Amount and related mortgage.

2.10 Closing. Provided that all conditions precedent to closing by the Parties have been satisfied or waived, as applicable, the City shall sell, assign, or convey the applicable portion of the Property, as reflected on the Development Plan or as more particularly described in mutually approved closing documents, and Developer shall purchase the same, in one or more closings corresponding to the phases of the Project. The initial closing for Phase 1 shall occur on or before thirty (30) days following issuance of the building permit

for Phase 1 (or such other permits or approvals as reasonably permit commencement of vertical construction for Phase 1), but in no case later than March 31, 2027. Either party may extend any applicable closing date once for sixty (60) business days by written notice.

As a condition to the Phase 1 Closing, City and Developer shall enter into a separate Maintenance Agreement governing maintenance responsibilities for the areas depicted on **Exhibit A-1** attached hereto (the “Maintenance Areas”), and such Maintenance Agreement shall survive closing in accordance with its terms. If, after expiration of the applicable extended closing date, any condition precedent to the Parties’ obligation to close remains unsatisfied, then either Developer or City may elect to (i) further extend the applicable closing date by written agreement, or (ii) terminate this Agreement as to the applicable phase, whereupon neither party shall have any further obligation to the other with respect to such phase except those obligations which expressly survive termination.

Should Phase 2 close, Phase 2 closing shall occur within thirty-six (36) months following the issuance of the last Phase 1 Building Permit. Nothing herein shall obligate Developer to proceed with Phase 2 until Developer, acting reasonably and in good faith, determines that financing, market, and development conditions support commencement of Phase 2.

2.11 Phase 2 Option Payments. Developer shall have the exclusive right to acquire the Phase 2 portion of the Property for a period of thirty-six (36) months following the issuance of the last Building Permit for Phase 1 (the “Option Period”), unless otherwise extended by mutual written agreement of the parties. In consideration for such exclusive rights and the deferred conveyance of the Phase 2 portion of the Property, beginning the Effective Date, Developer shall pay City non-refundable monthly Option Payments as follows:

- (i) \$0 from the Effective Date until the last Building Permit for Phase 1 is issued by the City;
- (ii) Ten Thousand and 00/100 Dollars (\$10,000.00) per month during the first twelve (12) months after last Building Permit is issued for Phase 1;
- (iii) Twenty Thousand and 00/100 Dollars (\$20,000.00) per month during months thirteen (13) through twenty-four (24) of the Option Period; and
- (iv) Thirty Thousand and 00/100 Dollars (\$30,000.00) per month during months twenty-five (25) through thirty-six (36) of the Option Period.

Such Option Payments shall not be credited against the Purchase Price. The Phase 2 Closing shall remain subject to satisfaction of the applicable conditions precedent set forth herein, including approval of the applicable Site Plan, issuance of building permits, and Developer’s demonstration of readiness to commence construction of Phase 2. If the Phase 2 Closing has not occurred prior to expiration of the Option Period, Developer’s exclusive rights with respect to the Phase 2 portion of the Property shall automatically terminate. Notwithstanding anything herein to the contrary, Developer shall have the right,

at any time during the Option Period, to elect not to proceed with Phase 2 by written notice to City. Upon delivery of such notice, Developer's exclusive rights with respect to the Phase 2 portion of the Property, together with any obligation to make future option fee payments, shall automatically terminate, and neither party shall have any further obligations with respect to the unclosed Phase 2 portion of the Property except as expressly stated herein to survive termination.

2.12 Inclusionary Housing. Developer shall designate 20% of each Phase of the multifamily housing units as affordable units, meaning those units shall be set aside for households making 80% of Area Median Family Income (and at least one unit for households making 60% of Area Median Family Income) as set forth in Section 1.6 above, with rental rates not to exceed 30% of household income. Such inclusionary housing shall be governed by and Developer shall comply with NRO 190-48 sections C, D, F and G as in effect as of the Effective Date. Developer will certify, before March 31 of each year, the Project's compliance with this Section in the form attached and incorporated into this Agreement as **Exhibit C**. Each year's certification must (i) include all income certifications received by Tenants for the reporting year and (ii) certify compliance based on the HUD Area Program Income Limits for the Nashua, New Hampshire HUD Metro Fair Market Rent Area for the year preceding the date of certification. The March 31 deadline is based on HUD's past custom of issuing the Area Program Income Limits in early April of each year. If HUD or any successor agency, ever issues the Area Program Income Limits in a month other than April, then Developer's certification deadline will be adjusted to a date that is approximately 12 months after the date of HUD's issuance.

2.13 Public Improvements. Provided Developer has been given its first Building Permit for the Project, the Project will include the following public improvements as depicted, and/or labeled, on the Master Concept Plan and as may be required by the Planning Board:

- A. At its sole cost, Developer will landscape and maintain the "Smokehouse Parcel" (being portions of Nashua Parcel ID's 77-1, 77-28, and 77-48) as shown on the Development Plan pursuant to an easement from the City, which easement will be executed at the closing;
- B. At its sole cost, Developer will design, build, landscape and maintain a ten foot (10') Riverwalk incorporating City's Riverfront Master Plan's concept plans with approval of the City of final design. City shall reserve a public use easement for the area as depicted on the Development Plan.
- C. Developer will allow public parking in the parking garage at a minimum of 10% of the spaces, to include a minimum of one (1) handicap space, from 8AM-8 pm, daily. Developer may charge up to the same amount charged at the School Street garage) and may charge hourly under the City's paid parking ordinance.
- D. Developer will design and build (i) a dog park (generally consistent with the plans included in the Dog Park Study) and (ii) a surface parking lot including

approximately twelve (12) parking spaces as part of Phase 1. The City will credit Developer up to a maximum amount of \$1,200,000.00 for the installation of the dog park, with a credit of \$600,000.00 shall be applied at the Phase 1 Closing, and a credit of \$600,000.00 shall be applied at the Phase 2 Closing, or reimbursed in such other manner as mutually agreed by the parties. Used herein “costs” shall include all permitting fees, engineering and design fees, and all other soft costs. The dog park and parking spaces will be completed prior to first occupancy permit for the Project. City will retain responsibility for maintaining and operating the dog park in a first-class condition and consistent with the Dog Park Study. The City shall cooperate with Developer on any permitting for the dog park.

City and Developer will work collaboratively to design and permit dog park, the cost of the design and construction of which shall be credited as described above, not to exceed \$1,200,000.00. If Developer does not build the dog park, no credit would be due to Developer. Developer and City agree to determine feasibility of the dog park no later than December 31, 2026.

2.14 Payment and Performance Bonds. Developer shall require its general contractor for the construction of the Project to furnish bonds covering faithful performance of the contract, completion of construction of the Project and payment of obligations arising in connection with the construction of the Project from a surety acceptable to the City and duly authorized to do business in New Hampshire (“Payment and Performance Bonds”). City shall be specifically named as a beneficiary under the Payment and Performance Bonds and the Payment and Performance Bonds shall, in all respects, be reasonably satisfactory to City. A duplicate original of the Payment and Performance Bonds shall be supplied to City, and City shall be entitled to maintain a direct action against the surety/bonding company (and any other parties that may be necessary parties to such an action). In the event of a default by Developer’s general contractor under its construction contract, City shall be entitled to participate fully in any action against such general contractor or the bonding company. The Developer shall not agree to any compromise or settlement of any City action against the general contractor or bonding company without City’s prior written consent, provided that City’s consent shall not be unreasonably withheld. Developer may also bring its own action against the general contractor or bonding company, as applicable, under this Section and Developer will be authorized to compromise or settle that action without City’s prior written consent, provided the settlement includes timely completion of the Project.

Developer shall require its general contractor(s) for the construction of each phase of the Project to furnish bonds covering faithful performance of the applicable construction contract, completion of construction of the applicable phase of the Project, and payment of obligations arising in connection with construction of such phase from a surety acceptable to the City and duly authorized to do business in New Hampshire (“Payment and Performance Bonds”). City shall be specifically named as a beneficiary under the Payment and Performance Bonds and the Payment and Performance Bonds shall, in all respects, be

reasonably satisfactory to City. A duplicate original of the applicable Payment and Performance Bonds shall be supplied to City, and City shall be entitled to maintain a direct action against the applicable surety/bonding company (and any other parties that may be necessary parties to such action). In the event of a default by Developer's general contractor under any applicable construction contract, City shall be entitled to participate fully in any action against such general contractor or the applicable bonding company. Developer shall not agree to any compromise or settlement of any City action against a general contractor or bonding company without City's prior written consent, provided that City's consent shall not be unreasonably withheld. Developer may also bring its own action against the applicable general contractor or bonding company under this Section and shall be authorized to compromise or settle such action without City's prior written consent, provided the settlement includes timely completion of the applicable phase of the Project.

ARTICLE III: DEFAULTS

3.1 Defaults by Developer and Remedies of City. If Developer materially defaults on the performance of its obligations to City prior to the Closing Date, then Developer will have seven (7) days after the City's delivery of written notice to Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Developer shall have such additional time as may be reasonably required to cure the default, provided Developer commences the cure within the initial seven (7) day cure period and thereafter diligently prosecutes the cure to completion (not to exceed sixty (60) days after commencement of the cure). If Developer is not able to cure the material default during the applicable cure period, then City will be entitled to terminate this Agreement and receive all of Developer's non-confidential work product regarding the Project, including the Project Design Drawings, and Development Plan (collectively, the "Liquidated Damages"). The Parties hereby agree that the Liquidated Damages are intended to be and will be the full liquidated damages for the Developer's failure to perform its duties, liabilities and obligations under this Agreement. The parties agree that City's damages would be very difficult to ascertain and the Liquidated Damages provided in this Section 3.1 constitutes a reasonable estimate of City's damages and is not intended as a penalty but as fully liquidated damages.

If Developer defaults on the performance of its obligations to City after the Closing Date, then Developer will have seven (7) days after the delivery of written notice by City of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Developer shall have an additional thirty (30) days to cure the default, provided Developer commences the cure within the initial seven (7) day cure period and thereafter diligently prosecutes the cure to completion. If Developer is not able to cure the default during the applicable cure period, then City may, at its sole discretion, (i) terminate this Agreement and receive the Liquidated Damages; or (ii) pursue the right to specific performance against Developer that would require Developer to fully perform all of its obligations under this Agreement on a timely basis.

3.2 Notice to Financiers and Ability to Cure. Notwithstanding anything in this Agreement to the contrary, City shall copy Developer's lender or equity partner in writing

(provided, however, that it is Developer's responsibility to provide an address or addresses for that purpose) on any default notice that City sends to Developer, and Developer's lender or equity partner shall have the same rights to cure Developer's default as Developer has under this Agreement.

3.3 Defaults by City and Remedies of Developer. If City defaults materially on the performance of its obligations to Developer under this Agreement, then City will have seven (7) days after the delivery of written notice by Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, City shall have such additional time as may be reasonably required to cure the default, provided City commences the cure within the initial seven (7) day cure period and then diligently prosecutes the cure to completion. If City is not able to cure the default during the applicable cure period, then Developer will be entitled to pursue any remedy available at law or in equity, including the termination of this Agreement and claims for damages resulting from the breach and termination(s).

3.4 Other Defaults. A Party will be in default of its obligations under this Agreement in the event that it is adjudicated bankrupt or insolvent, makes an assignment for the benefit of creditors or enters into a composition for creditors, or will file a voluntary bankruptcy petition or an answer admitting the material allegations of an involuntary bankruptcy petition; or if an order is entered appointing a receiver or trustee for that Party or for a substantial portion of the assets of that Party and the same is not vacated within sixty (60) days after entry, or if that Party applies for or consents to the appointment of any such receiver or trustee. In the event of a default specified in this Section 3.4, non-defaulting Party may immediately pursue all remedies available to it by law or in equity, including specific performance and the termination of this Agreement.

ARTICLE IV: CITY AND DEVELOPER MUTUAL OBLIGATIONS

4.1 City Approval. The Board approved the sale of the Property by passage of R-24-021 on April 9, 2024. The Board approved this Agreement by passage of R-26-xxx on _____, 2026.

4.2 Exclusivity. During the term of this Agreement, City will work exclusively with the Developer to develop the Project.

4.3 Insurance. Developer shall maintain and shall assure that its contractors who enter the Property maintain insurance in agreements and in form and substance adequate to insure Developer, its agents, employees or contractors, from claims arising out of any entry or inspections of the Property pursuant to the provisions of this Agreement, and Developer shall provide City with evidence of the following insurance coverage prior to performing any inspections of the Property:

- Comprehensive General Liability insurance for bodily injury and property damage coverage with a combined single limit of at least \$1,000,000 each occurrence and \$2,000,000 aggregate. The insurance shall include coverage for, but not be limited

to; premises and operations, contractual liability, personal injury, explosion, collapse and underground coverage ;

- Business Automobile Liability Insurance providing bodily injury and property damage with combined single limit of at least \$1,000,000 per occurrence. The insurance shall include coverage for, but be limited to; all owned, non-owned, hired or rental vehicles;
- Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000. All contractors and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation;"
- Professional Liability of at least \$2,000,000. The insurance shall include coverage for, but not be limited to; punitive damages and contractual liability. Such Errors and Omissions policy shall be maintained in full force and effect for three years from the date of project completion.

The above liability requirements can be met with a combination of underlying and umbrella/excess insurance.

Developer will provide the City with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the Agreement prior to any inspections of the Property. The City requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. General Liability and Auto Liability policies must name the **City of Nashua as an additional insured** and reflect on the certificate of insurance. All policies shall contain a Waiver of Subrogation in favor of the City of Nashua and its officers, directors, employees, volunteers and agents. Developer is responsible for filing updated certificates of insurance with the City's Risk Management Department during the life of the Agreement and upon request, a copy of the policy -

- Developer shall maintain in effect at all times during the performance under this Agreement all specified insurance coverage with insurers.
- Subcontractors are subject to the same insurance requirements as Developer and it shall be the Developer's responsibility to ensure compliance.
- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Developer must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- None of the requirements as to types and limits to be maintained by Developer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Developer under this Agreement and the Developer is encouraged to purchase such additional insurance as it deems necessary.

- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Developer is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by Developer or anyone employed, directed, or supervised by Developer.

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

- Withholding of income taxes by the City;
- Industrial insurance coverage provided by the City;
- Participation in group insurance plans which may be available to employees of the City;
- Participation or contributions by either the Developer or the City to the public employee's retirement system;
- Accumulation of vacation leave or sick leave provided by the City;
- Unemployment compensation coverage provided by the City.

ARTICLE V: MISCELLANEOUS

5.1 Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between Developer and City, or to impose any partnership obligation or liability upon the Parties. Neither Developer nor City shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other.

5.2 No Third-Party Beneficiaries. This Agreement is not intended to and does not confer any right or benefit on any third party other than the Parties.

5.3 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party under this Agreement shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner in this Agreement prescribed. The notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent

courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

City: Liz Hannum, Director of Economic Development
City Hall – Economic Development Office
229 Main Street/P.O. Box 2019
Nashua, New Hampshire 03061

With a copy to: Celia Leonard, Deputy Corporation Counsel
City Hall - Corporation Counsel Office
229 Main Street/P.O. Box 2019
Nashua, NH 03061

Developer: Lansing Melbourne Group, LLC
101 NE 3rd Avenue, Suite 1500
Fort Lauderdale, Florida 33301
Attn: Peter Flotz

With a copy to: Andrew A. Prolman, Esquire
Prunier & Prolman, PLLC
20 Trafalgar Square, Suite 100
Nashua, NH 03063
Phone: 603-883-8900
Email: aprolman@prunierlaw.com

5.4 Entire Agreement. This Agreement sets forth and incorporates by reference all the agreements, conditions and understandings between the Parties relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement or as contained the Development Plan as of the Effective Date, except as the Development Plan may be modified by necessary governmental permits and approvals and professional recommendations. Developer shall notify City in writing of any such material modifications.

5.5 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

5.6 Assignment.

a) Developer shall not, prior to Closing, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of City, which consent may be withheld in City's sole discretion, except that Developer may freely assign to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements provided that

the Developer notify City of any such assignment at least ten days before closing, and that any such entities must be subject to real estate taxation.

b) Developer shall not, after the issuance of a certificate of occupancy for the Project, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of City (which consent shall not be unreasonably withheld or delayed), except that Developer may freely assign its interest in the Agreement to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements, provided that any such entities must be subject to real estate taxation.

c) No assignment, with or without the consent of City, shall be effective unless each assignee shall assume and agree to perform and observe all the covenants and agreements of Developer being assigned. No assignment of this Agreement by Developer shall release or relieve the Developer of any duties, obligations or liabilities under this Agreement and from and after any such assignment the assigning Developer shall be jointly and severally liable with the assignee for the performance of and compliance with all of Developer's duties obligations and liabilities under this Agreement.

d) City may not assign, transfer or delegate its rights, duties and obligations under this Agreement without the consent of Developer in its reasonable discretion (which consent shall not be unreasonably withheld or delayed) to any purchaser of the Property who assumes and agrees to perform and observe all the covenants and agreements of City being assigned thereby. No such assignment, with or without the consent of Developer, shall be effective unless each such assignee shall assume and agree to perform and observe all the covenants and agreements of City being assigned thereby. In the event of any assignment of the interest of City under this Agreement, City shall be released and relieved of all liability for the performance and observance of all covenants and agreements of City's covenants and agreements under this Agreement so assigned.

5.7 Terms for Consent or Approval. When this Agreement calls for one Party to seek the approval or consent of the other Party, the Party with the right to grant or deny consent or approval must exercise its reasonable discretion in doing so, unless specified otherwise by the terms of this Agreement. The requesting party must make requests for consent or approval in writing in accordance with the terms for notice in this Agreement and substantiate that request with commercially reasonable documentation unless specified otherwise by the terms of this Agreement. The Party with the right to grant or deny consent or approval shall review each such request diligently, reasonably and in good faith and deliver its decision whether to give or deny consent or approval to the requesting Party in writing in accordance with the terms for notice in this Agreement within thirty (30) business days of the delivery of the other Party's request. If the reviewing Party elects to deny its consent or approval, then it must substantiate that decision with commercially reasonable documentation that enables the requesting Party to comprehend the decision and, if appropriate, modify such request and re-submit it to the reviewing Party for further review pursuant to these terms for consent or approval. A Party reviewing a request for consent to the assignment of rights and obligations by the requesting Party may consider

the creditworthiness, financial wherewithal, expertise and experience of the proposed assignee when compared to the requesting Party, in the exercise of reasonable discretion whether to grant or deny consent or approval.

5.8 Terms for Other Response. When this Agreement calls for one Party to notify the other Party of any other election under this Agreement, then the electing Party shall notify the other party of the applicable decision no later than thirty (30) days after the electing Party was notified of its obligation to make the election.

5.9 Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Hillsborough County, New Hampshire or the United States District Court of New Hampshire, Concord Division.

5.10 Counterparts. This Agreement may be executed electronically, and in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

5.11 Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending that action; provided, however, each Party shall retain the right to pursue its own independent legal defense.

5.12 No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of that Party to exercise at some future time said right or any other right it may have under this Agreement.

5.13 Severability. If any term or provision of this Agreement shall be judicially determined to be void or of no effect, that determination shall not affect the validity of the remaining terms and provisions of this Agreement. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

5.14 Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind, respectively, City and Developer.

5.15 Representations and Warranties of Developer. Developer represents and warrants to City that:

a) Developer is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida;

b) Developer is duly qualified to do business and is in good standing under the laws of the State of New Hampshire;

c) Developer has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise; and

d) Developer will execute, deliver and perform this Agreement in accordance with all applicable laws and ordinances.

5.16 Representations and Warranties of City. City represents and warrants to Developer that:

a) City has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise;

b) City will execute, deliver and perform this Agreement in accordance with all applicable laws and ordinances;

c) To the actual knowledge of City Attorney, the Property is not the subject of any litigation, pending or overtly threatened, or other judicial or quasi-judicial procedure which would, if determined unfavorably to the City, settled or otherwise resolved by the City, result in any financial liability on the part of Developer or interfere with the development of the Project;

d) To the actual knowledge of the City Attorney, the Property is not the subject of any procedure for the taking of the Property by eminent domain, in whole or in part, pending or overtly threatened by the City or any other governmental authority with the power of eminent domain;

e) To the actual knowledge of the City Attorney, no one has made any claim to title to the Property, in whole or in part, superior to the claim of the City by virtue of its chain of title; and

f) The City has not received any notice from any governmental agency, state, federal or local, that the Property is in violation of or the subject of an investigation regarding the potential violation of any Laws and Ordinances, including laws of the United States or the State regarding the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on the Property, or the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on properties adjacent to the Property as a result of their origination on or passage through the Property.

5.17 Continuing Obligation. This Agreement is intended by the parties to continue after closing until terminated by the parties in writing. From time to time after the Closing Date or the Deadline Closing Date, the Parties will execute additional instruments of assignment, lease, license, conveyance and other documents and take such other actions that are reasonably necessary to further the purposes of this Agreement.

5.18 Immunity Not Waived. City does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the City acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought under this Agreement.

5.19 Release of Information. City and Developer acknowledge that this Agreement is subject to disclosure under the New Hampshire public records laws, except for information that is excluded from the disclosure requirements of those laws. Nothing in this Agreement precludes either party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public City meetings in compliance with applicable laws.

5.20 Representations, Warranties and Indemnity Regarding Brokers.

a) City represents to Developer that no real estate broker or agent has rendered a service or represented City in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.

b) Developer represents to City that no real estate broker or agent has rendered a service or represented Developer in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.

c) City and Developer covenant and agree, each to the other, to indemnify the other against any claims based upon or arising out of the employment or use by the indemnifying party of any real estate broker, agent or finder in connection with the leasing of the Property. This Section 5.20 shall survive Closing or any earlier termination of this Agreement.

5.21 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING THROUGH THAT OTHER PARTY) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER).

5.22 Non-Appropriation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any Constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of the Constitution of the State of New Hampshire. This Agreement shall not directly or indirectly

or contingently obligate the City to make any payments beyond the amount appropriated, if any, in the sole discretion of the City for any fiscal year in which this Agreement shall be in effect. The City may at the end of any fiscal year terminate its future installment payment obligations under this Agreement if the City has not appropriated sufficient funds to make the next fiscal year's scheduled installment payments; however, during each fiscal year, the City shall exercise its best efforts to appropriate funds for installment payments due in the next fiscal year. No deficiency judgment may be rendered against the City in any action for breach of a contractual obligation under this Agreement and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys. To the extent of any conflict between this Section 5.22 and any other provision of this Agreement, this Section shall take priority.

5.23 Amendment. This Agreement shall not be modified or amended in any respect except by a written instrument executed by the Parties.

5.24 Time of the Essence. Time is of the essence in this Agreement.

5.25 Survival. All representations, warranties and obligations of the Parties in this Agreement shall survive the consummation or performance of the various transactions contemplated in this Agreement for the respective terms necessary for each of the Parties to realize the benefits contemplated by this Agreement and to enforce the rights provided for in this Agreement.

5.26 Recitals and Exhibits. The Recitals of this Agreement and the Exhibits attached to this Agreement are integral and essential components of this Agreement.

5.27 Defined Terms. All capitalized terms in this Agreement shall have the meaning ascribed to them in this Agreement unless the context clearly indicates another meaning. All terms not defined in this Agreement shall have the usual and customary meaning ascribed to them and found in any modern American English dictionary.

5.28 Term. Unless by its terms a provision will survive, this Agreement will terminate on March 31, 2030.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

CITY OF NASHUA, NEW HAMPSHIRE

James W. Donchess, Mayor, duly authorized

This Agreement was approved by the City of Nashua Board of Aldermen by R-26-xxx passed on _____.

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

I, the undersigned, a Notary Public of the State and County aforesaid, do hereby certify that James W. Donchess personally came before me this day and acknowledged under seal that he is the Mayor of the City of Nashua, and acknowledged, on behalf of the City, the due execution of the foregoing instrument.

WITNESS my hand and official seal, this ____ day of _____ 2026.

Notary Public
My commission expires:

Liz Hannum, Director of Economic Development
City's Administrator for this Agreement

LANSING MELBOURNE GROUP, LLC,
a Florida limited liability company

Peter Flotz, Manager, duly authorized

STATE OF FLORIDA
COUNTY OF BROWARD

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Peter Flotz personally came before me this day and acknowledged under seal that he is Manager of LANSING MELBOURNE GROUP, LLC, a Florida limited liability company, and acknowledged, on behalf of the company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____ 2026.

Notary Public

My commission expires:

EXHIBIT A

PROPERTY DESCRIPTION

Certain real property composed of Nashua, New Hampshire tax assessor parcel numbers:

1 Pine Street Extension Map/Lot 77-30, 50441 (2.03 acres), excepting and reserving from the sale of such lot the land under the existing Spine Road (private) and Pine Street Extension (private) and 10 feet from the northerly side of said Spine Road and the westerly and northerly sides of Pine Street Extension, along the length of such roads on the lot.

Declared surplus by Amended R-14-059 passed September 10, 2014
DOT Parcel # 73, Ineligible

L Pine Street Extension Map/Lot 77-7 25100 (0.3 acre), excepting and reserving from the sale of such lot the land under the existing Spine Road (private) and all land 10 feet from the northerly side of said Spine Road along the length of such road on the lot.

Declared surplus by R-24- 020 passed April 9, 2024

3 Pine Street Extension Map/Lot 77-2A 40015 (0.59 acre), excepting and reserving from the sale of such lot the land under the existing Pine Street Extension (private) and all land 10 feet from the westerly side of said Pine Street Extension along the length of such road on the lot.

Lot comprised of a portion of 77-17 which was declared surplus by Amended R-14-059 passed September 10, 2014

DOT Parcel # 72, Ineligible

Remainder of lot compromised of old PSNH substation Lot 77-2A, see lot line adjustment plan HCRD Plan #40965

Declared surplus by R-24- 020 passed April 9, 2024

All subject to existing easements and all matters of record. City will reserve easements for all City infrastructure currently in place on, in, under, or over any of the lots.

Map Attached

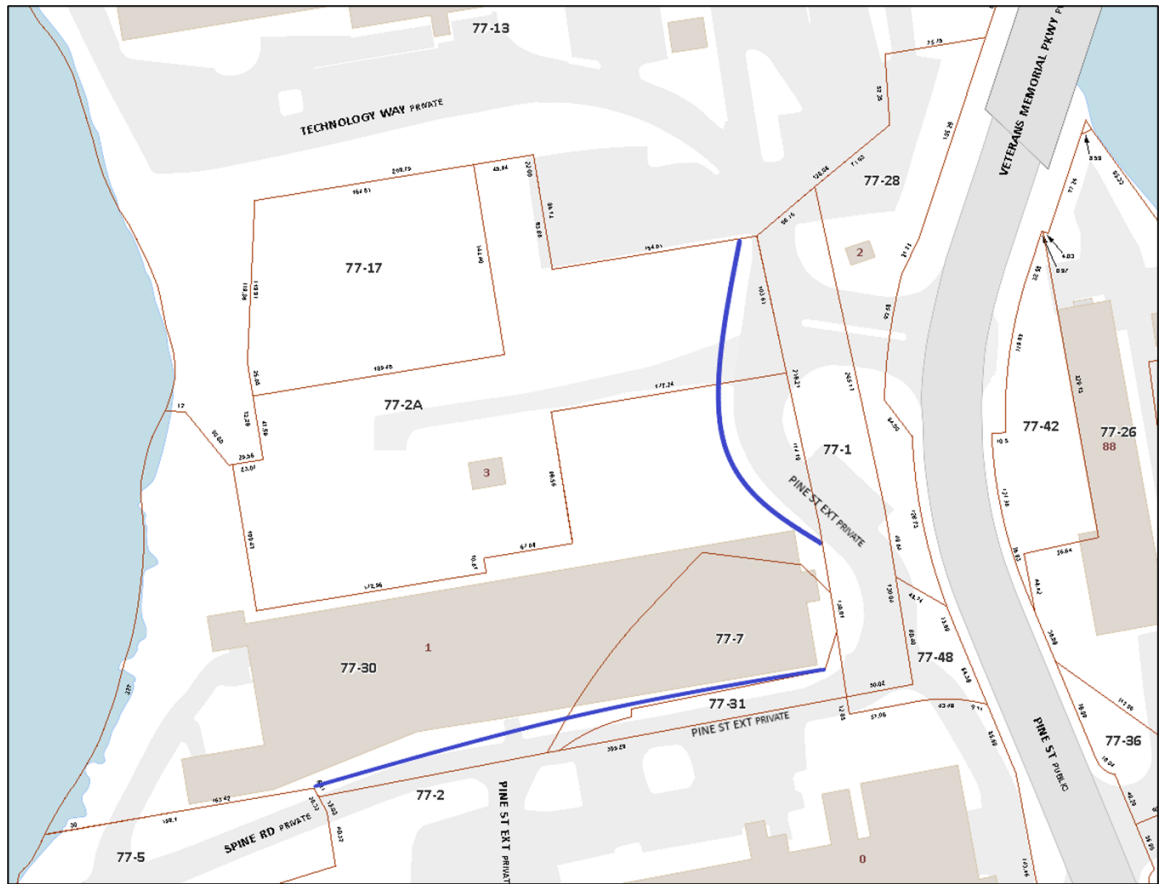
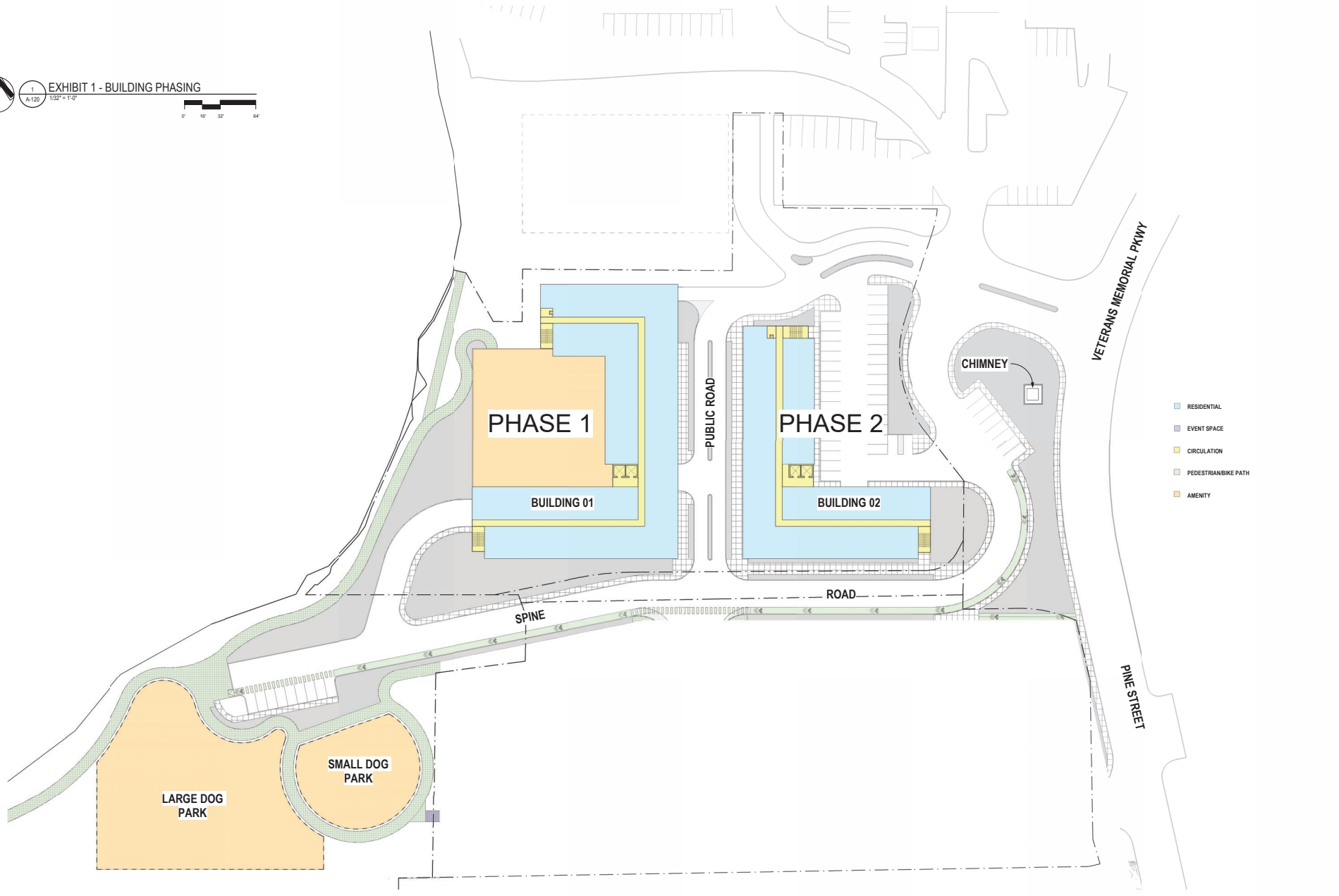


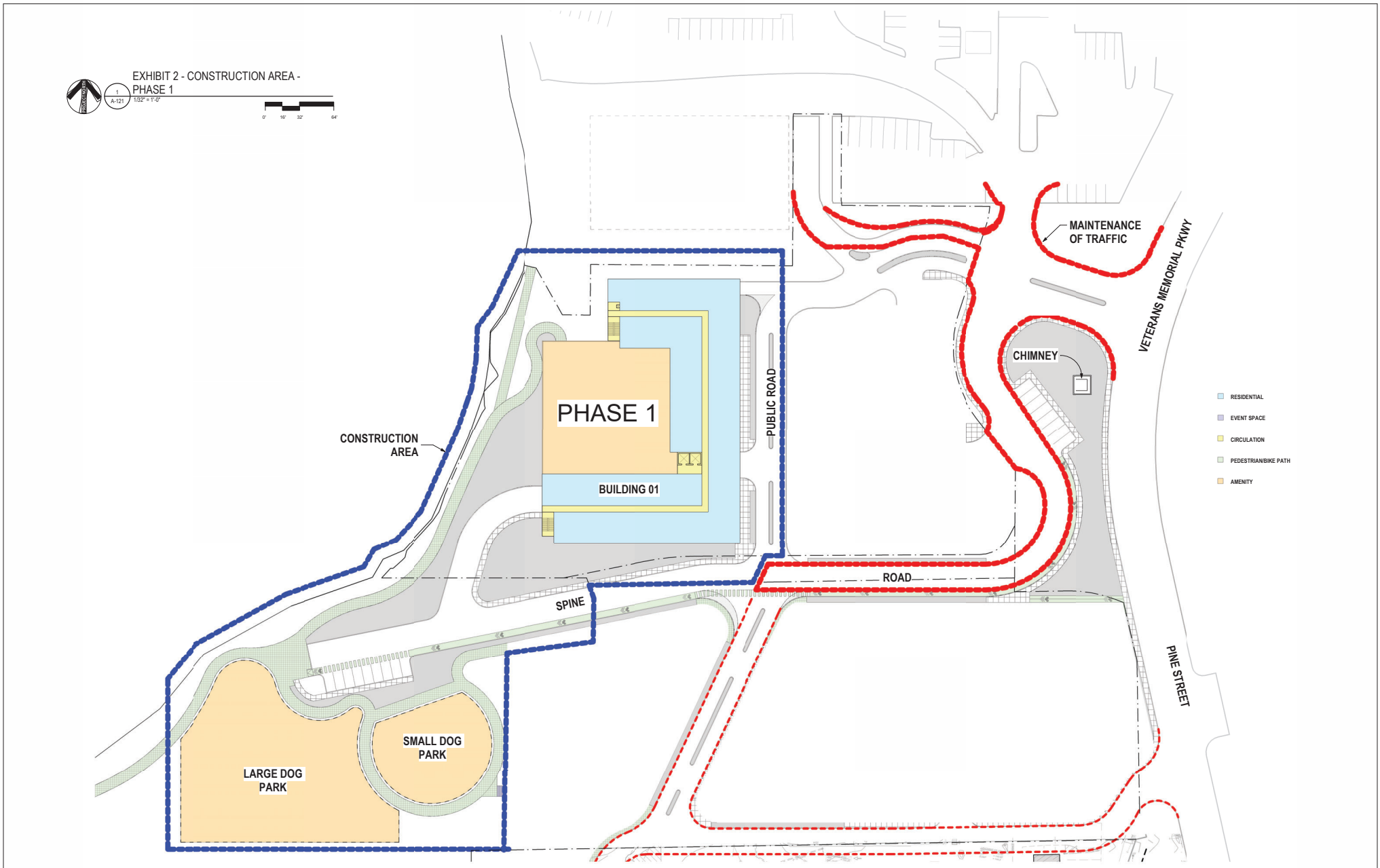
EXHIBIT A-1

MAINTENANCE AREA

EXHIBIT B

DEVELOPMENT PLAN





PUBLIC
IMPROVEMENTS

PHASE 1

BUILDING 01

PUBLIC ROAD

ROAD

SPINE

CHIMNEY

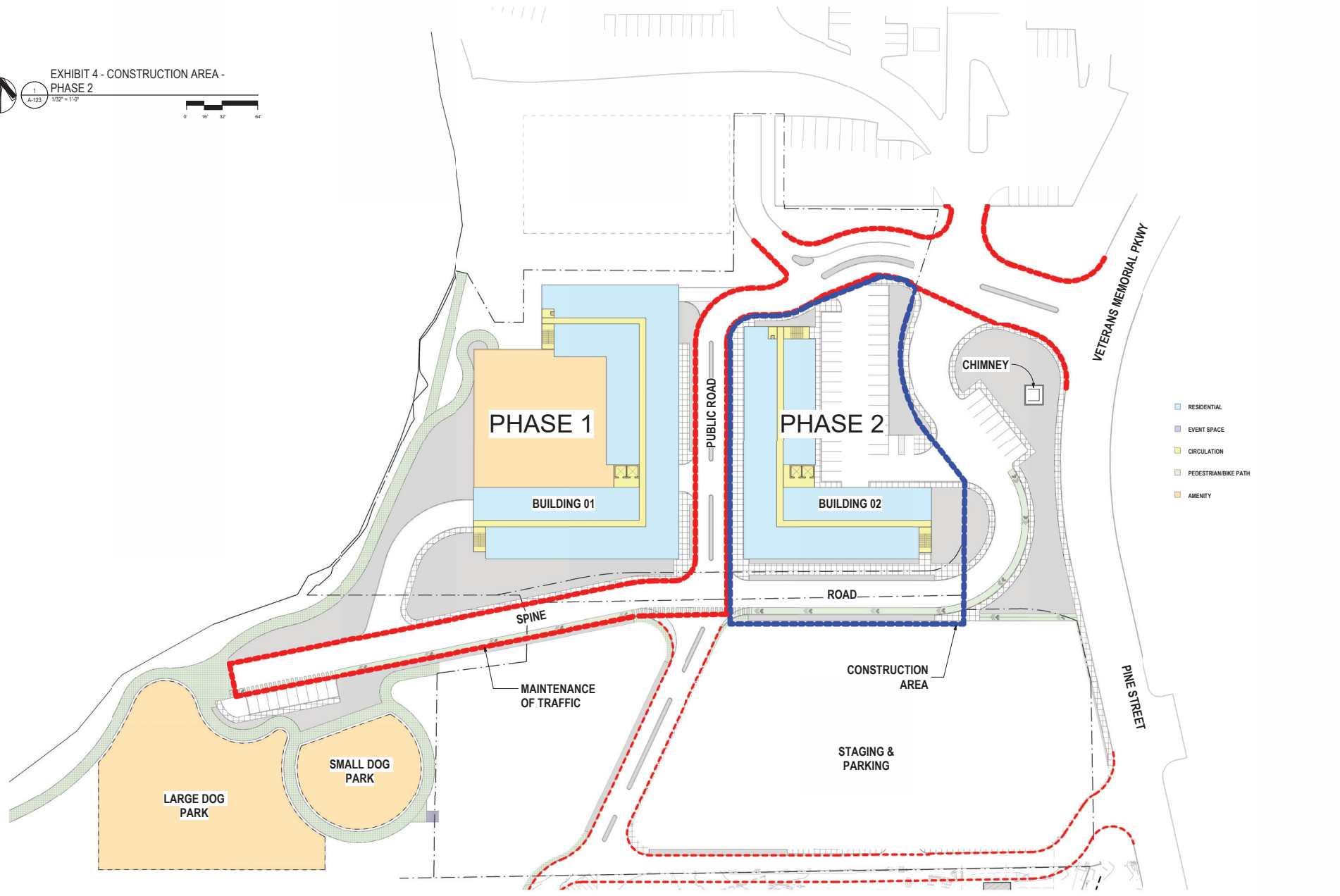
VETERANS MEMORIAL PKWY

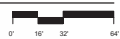
PINE STREET

LARGE DOG
PARK

SMALL DOG
PARK

- RESIDENTIAL
- EVENT SPACE
- CIRCULATION
- PEDESTRIAN/BIKE PATH
- AMENITY





MAINTAINED BY CITY
 MAINTAINED BY PROJECT

RESIDENTIAL
 EVENT SPACE
 CIRCULATION
 PEDESTRIAN/BIKE PATH
 AMENITY

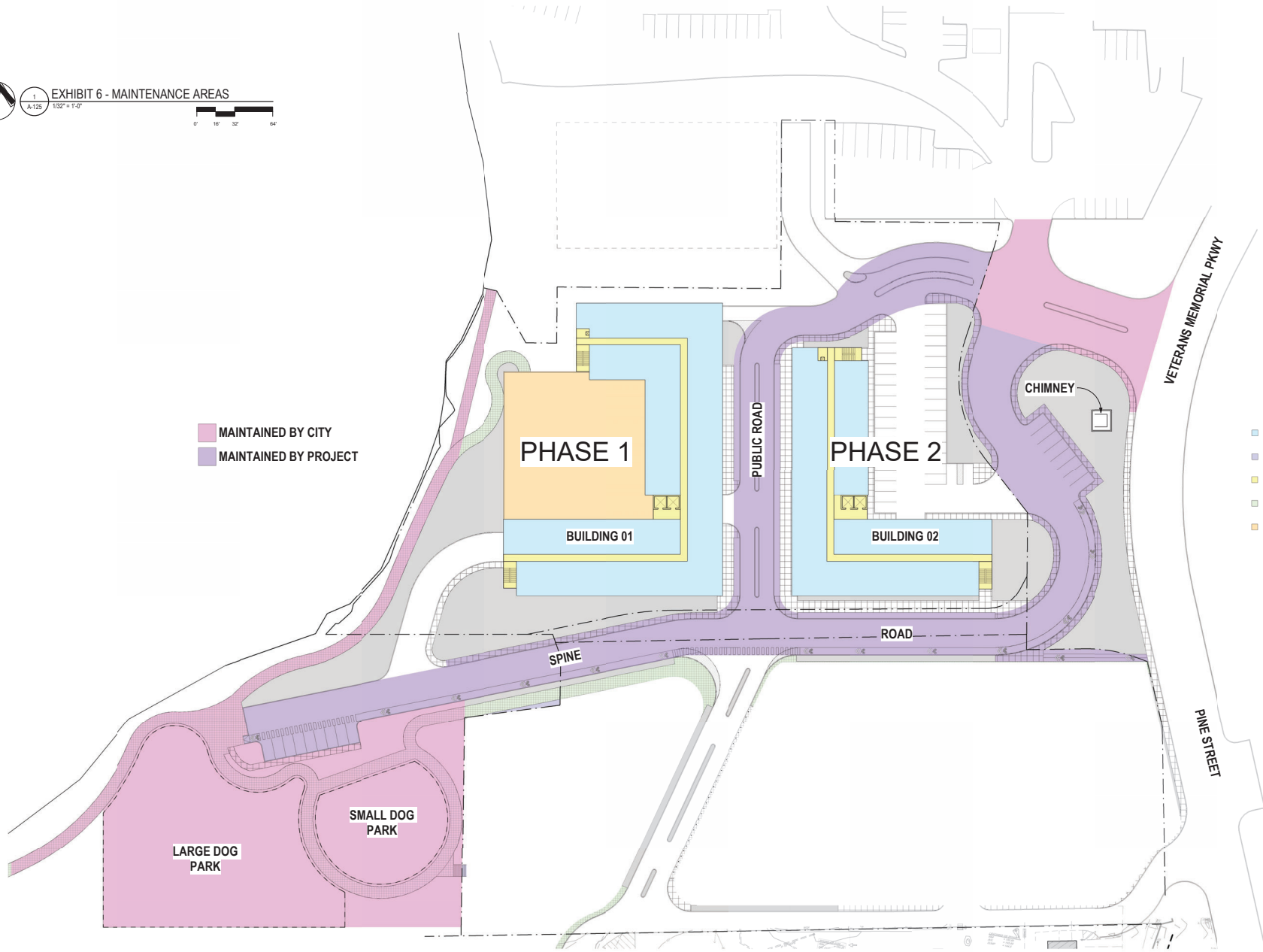


EXHIBIT C

CERTIFICATION OF AFFORDABLE UNITS

Developer hereby certifies, as of March 31, _____, that the following units have been rented to or set aside as “affordable Units” as defined in the Master Development Agreement between Developer and City dated _____. The Housing and Urban Development (“HUD”) Area Program Income Limits for the Nashua, New Hampshire HUD Metro Fair Market Rent Area for the current reporting year are attached and incorporated into this Certification. Developer has submitted all Tenant Income Certification Forms to City simultaneously with the submittal of this Certification.

Unit Number	Date of Tenant Income Certification	Amount of Monthly Rent for Reporting Year
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EXHIBIT D

PURCHASE AND SALE AGREEMENT AS AMENDED

FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (“**Amendment**”) is made as of the ____ day of _____, 2026, by and between **LANSING MELBOURNE GROUP, LLC**, a Florida limited liability company (“**Developer**”) as buyer, and **CITY OF NASHUA, NEW HAMPSHIRE**, a New Hampshire municipal corporation (“**City**”) as seller.

RECITALS

A. City and Developer entered into that certain Purchase and Sale Agreement dated April 24, 2024 as amended by First Amendment to Purchase and Sale Agreement dated November 8, 2024, by Second Amendment to Purchase and Sale Agreement dated December 16, 2024, and by Third Amendment to Purchase and Sale Agreement dated April 1, 2025 (the “**PSA**”) with respect to the purchase and sale of certain real property more particularly described in the PSA (the “**Property**”).

B. City and Developer wish to amend the PSA because the Developer’s program has been modified to a two-phase development, necessitating a restatement of the proposed project and incorporation of two property closings.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals; Definitions. Each of the foregoing recitals are incorporated into and made a part of this Amendment by this reference. All capitalized terms used in this Amendment shall have the meanings ascribed in the Agreement unless otherwise defined in this Amendment.

2. Completion of Due Diligence Period. City and Developer agree and confirm that all due diligence by Developer is complete. Developer’s right to terminate without cause has therefore expired.

3. Project Program. The parties acknowledge that Developer’s proposed development program has been revised to a phased development as follows:

- a) **Phase 1:** No less than one hundred thirty-five (135) multifamily dwelling units, together with approximately one hundred fifty-five (155) parking spaces and certain initial public improvements, as agreed to in the MDA (defined below)
- b) **Phase 2:** No less than one hundred seven (107) multifamily dwelling units, together with approximately ninety-nine (99) parking spaces and remaining contemplated improvements. Developer’s right to Phase 2 is subject to the Option Payments required in the Amended and Restated Master Development Agreement (the “**MDA**”). Per the MDA, nothing herein shall obligate the Developer to proceed with Phase 2 until Developer, acting reasonably and in good faith, determines that financing, market, and development conditions support commencement of Phase 2.

The Project is further described in the MDA between the parties, as amended from time to time, including the phased development plans and related exhibits incorporated therein. All unit counts, parking counts, layouts, phasing plans, and improvements are approximate and subject to change

based on final design, engineering, permitting, financing, market conditions, and applicable governmental approvals.

4. Purchase Price. Section 2.1(a) of the PSA is deleted in its entirety and replaced as follows:

The total Purchase Price for the Property shall be Thirty-Five Thousand Dollars (\$35,000.00) per unit for Phase I with no less than 135 units and, if the option is exercised, Twenty-Five Thousand Dollars (\$25,000.00) per unit for Phase 2 with no less than 107 units, as set forth in the MDA.

- a) Developer shall receive a demolition credit in the amount of Seven Hundred Thousand Dollars (\$700,000.00), which shall be applied in full at the Phase 1 Closing, unless otherwise mutually agreed.
- b) Developer shall receive a credit against the Purchase Price for the actual out-of-pocket hard and soft costs incurred by Developer in connection with the design and construction of the dog park improvements required under the MDA, including reasonable engineering, permitting, sitework, utility, landscaping, and related improvement costs, up to a maximum amount of \$1,200,000.00, which a credit of \$600,000.00 shall be applied at the Phase 1 Closing, and a credit of \$600,000.00 shall be applied at the Phase 2 Closing, or reimbursed in such other manner as mutually agreed by the parties.

5. Closing. Section 2.1 (b) of the PSA is deleted in its entirety and replaced as follows:

Provided that all conditions precedent to closing by the parties have been satisfied or waived, the transactions contemplated herein shall occur in one or more closings corresponding to the phases of the Project.

- a) Phase 1 Closing shall occur on or before thirty (30) days following issuance of a building permit for Phase 1, but in no case later than March 31, 2027.
- b) Phase 2 Closing may occur at any time following satisfaction of the applicable conditions precedent, but in no event later than thirty-six (36) months following issuance of the last building permit (if more than one) for Phase 1.
- c) The Phase 2 Closing is subject to certain Option Payments as set forth in the MDA.
- d) Prior to each applicable closing, Developer shall prepare, at its cost, any required legal descriptions, subdivision plans, lot line adjustments, or related documents necessary to facilitate the applicable phase closing, and City shall reasonably cooperate in reviewing and executing the same.
- e) Either party may extend any applicable closing date once for sixty (60) business days by written notice. Thereafter, the parties may mutually agree to additional extensions.

6. Notice. Section 5.3 is amended to delete the reference to Drew Melville and replace with:

With a copy to:

Andrew A. Prolman, Esquire
Prunier & Prolman, PLLC
20 Trafalgar Square, Suite 100
Nashua, NH 03063
Phone: 603-883-8900
Email: arolman@prunierlaw.com

7. General. The terms and provisions of this Amendment shall be governed and construed in accordance with the laws of the State of New Hampshire. City and Developer agree that, except as modified by this Amendment, the Agreement remains in full force and effect in accordance with its terms. In the event of any conflict between this Amendment and the Agreement, the terms of this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of City and Developer and their respective successors, and assigns.

[SIGNATURE PAGES FOLLOW]

WHEREFORE, City and Developer have caused this Amendment to be executed as of the day and year first above written.

CITY OF NASHUA, NEW HAMPSHIRE

James W. Donchess, Mayor, duly authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH**

I, the undersigned, a Notary Public of the State and County aforesaid, do hereby certify that James W. Donchess personally came before me this day and acknowledged under seal that he is the Mayor of the City of Nashua, and acknowledged, on behalf of the City, the due execution of the foregoing instrument.

WITNESS my hand and official seal, this ____ day of _____, 2026.

Notary Public

My commission expires:

(SEAL)

LANSING MELBOURNE GROUP, LLC,
a Florida limited liability company

Peter Flotz, Manager, duly authorized

STATE OF FLORIDA
COUNTY OF BROWARD

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Peter Flotz personally came before me this day and acknowledged under seal that he is Manager of LANSING MELBOURNE GROUP, LLC, a Florida limited liability company, and acknowledged, on behalf of the company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2026.

Notary Public

My commission expires:

(SEAL)

EXHIBIT 2.3

1. (77-2A) R0137
2. (77-2A) R0137copies1
3. (77-2A) R0137copies2
4. (77-2A) R0137copies3
5. (77-2A) R0137copies4
6. (77-2A) R0137copies5
7. (77-13, Cody) 19571127 - Bk 1521 Pg 50 - Deed - Nashua NH Foundation
8. (77-13, Cody) 19650715 - Bk 1837 Pg 452 - Deed - Millyard Realty Corporation
9. (77-13, Cody) 19731031 - Bk 2332 Pg 403 - Deed Sprague Electric Company
10. (77-13, Cody) 19800107 - Bk 2746 Pg 001 - Deed - North American Phillips Corporation
11. (77-13, Cody) 19811102 - Bk 2882 Pg 554 - Deed - Nashua Corporation
12. (77-13, Cody) 19821104 - Bk 2962 Pg 600 - Warranty Deed – Lapierre
13. (77-13, Cody) 19851103 - Bk 2962 Pg 604 - Warranty Deed – Lapierre
14. (77-14, Cody) 19490518 - Bk 1222 Pg 152 - Deed - Nashua NH Foundation
15. (77-14, Cody) 19490518 - Plan No. 178 C and 178 D
16. (77-14, Cody) 19490714 - Bk 1227 Pg 345 - Deed – Cody
17. (77-14, Cody) 19490715 - Bk 1227 Pg 323 - Deed - Nashua NH Foundation
18. (77-14, Cody) 19850924 - Bk 3412 Pg 0914 - Quitclaim Deed - Nashua NH Foundation
19. (77-14, Cody) 20120629 - Bk 8442 Pg 1992 - Warranty Deed – Cody
20. (77-14, Cody) 20171017 - Title Summary Report - 77-14 – Millyard
21. (77-17, Cody) 19500110 - Bk 1244 Pg 458 - Deed - Nashua NH Foundation
22. (77-17, Cody) 19750115 - Bk 2385 Pg 625 - Trustees Deed – Cody
23. (77-17, Cody) 19760315 - Bk 2445 Pg 841 - Deed - Nashua Corporation
24. (77-17, Cody) 19760323 - Bk 2446 Pg 055 - Deeds - Nashua NH Foundation
25. (77-17, Cody) 19840402 - Bk3149 Pg 0045 - Statutory Power of Sale Mortgage - 10 Pine Street LP
26. (77-17, Cody) 19840731 - Bk 3194 Pg 0512 - Deed - Nashua NH Foundation
27. (77-17, Cody) 19840815 - Bk 3216 Pg 0804 - Warranty Deed - 10 Pine Street LP
28. (77-17, Cody) 19840828 - Bk 3216 Pg 0807 - Easement Deed - James Cody
29. (77-17, Cody) 19930126 - Bk 5407 Pg 1610 - Surveyor's Affidavit - 10 Pine Street LP & James Cody
30. (77-17, Cody) 19930407 - Bk 5430 Pg 0260 – Covenant
31. (77-17, Cody) 19930415 - Bk 5422 Pg 1893 - Surveyors' Affidavit - 10 Pine Street LP & James Cody
32. (77-17, Cody) 20001027 - Bk 6313 Pg 1929 - Warranty Deed – Cody
33. (77-17, Cody) 20171017 - Title Summary Report - 77-17 – Millyard
34. (77-17, Cody) Plan No. 188 Exhibit A - Land & Right of Way from Nashua NH Foundation

- 35.
36. (77-17, Cody) Plan No. 188 - A - Exhibit B - Approximate Location of Right of Way - Distribution lines PSNH
37. (77-17, Cody) Plan No. 188-B - Exhibit C - Right of Way Across Land of Nashua NH Foundation
38. (77-17, Cody) Plan No. 189 F - Land & Building for John Cody - 1-10-50
39. (77-17, Cody) Plan No. 871 - Exhibit B - Land & ROW - Nashua NH Foundation
40. (77-17, Cody) Plan No. 3074 - Bleachery Lot
41. (77-17, Cody) Plan No. 8973 - Sewer Easement Plan - North American Philips
42. (77-17, Cody) Plan No. 13237 - Nashua Corp
43. (77-17, Cody) Plan No. 15673 - 10 Pine Street Limited partners
44. (77-17, Cody) Plan No. 16524 - 10 Pine Street Limited Partners
45. (77-17, Cody) Plan No. 16945 - Lot Line Relocation & Easement Plan
46. (77-17, Cody) Plan No. 17206 - 10 Pine Street Limited Partners
47. (77-17, Cody) Plan No. 18888 - 10 Pine Street Limited Partners
48. (77-17, Cody) Plan No. 26203 - Boundary Plan of Land
49. (77-30 & 77-31, 1 Pine St Ext) 19930407 - Covenant - Bk 5430 Pg 0260 – Nimco
50. (77-30 & 77-31, 1 Pine St Ext) 20030617 - Notice of Condemnation - Bk 6978 Pg 2228 – Nimco
51. (77-30 & 77-31, 1 Pine St Ext) 20150123 - Drainage Easement Deed Bk 8733 Pg 0018 – Nimco
52. (77-30 & 77-31, 1 Pine St Ext) Plan # 1803 - Land of WH Bagshaw – Nimco
53. (77-30 & 77-31, 1 Pine St Ext) Plan #38365 DWR #178 – Nimco
54. (77-30 & 77-31, 1 Pine St Ext) Title Summary Report 77-30 and 77-31
55. Millyard Deed City to PSNH_Bk 9469 Pg 939
56. Millyard Deed PSNH to City Bk 9469 Pg 936
57. Millyard Drainage Easement Lot 77-17 Bk 9469 Pg 957
58. Millyard Easement Plan Lot 77-5 and E-1487 Plan No. 40970
59. Millyard Easement Plan Lot 77-17 Plan No. 40969
60. Millyard Easement Plan Lot 77-28 Plan No. 40967
61. Millyard Easement Plan Lot 77-30 Plan No. 40966
62. Millyard LLA Plan No. 40965
63. Millyard Partial Release 9469 Pg 961
64. Millyard Utility and Access Easement Lot 77-17_Bk 9469 Pg 941
65. Millyard Utility and Access Easement Lot 77-28 Bk 9469 Pg 946
66. Millyard Utility Easement Lot E-1487_Bk 9469 Pg 954
67. Millyard Recording Clarification Agrmt_Bk 9473 Pg 1581
68. Millyard Utility Easement Lot 77-30 Bk 9469 Pg 950

FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (“**Amendment**”) is made as of the ____ day of _____, 2026, by and between **LANSING MELBOURNE GROUP, LLC**, a Florida limited liability company (“**Developer**”) as buyer, and **CITY OF NASHUA, NEW HAMPSHIRE**, a New Hampshire municipal corporation (“**City**”) as seller.

RECITALS

A. City and Developer entered into that certain Purchase and Sale Agreement dated April 24, 2024 as amended by First Amendment to Purchase and Sale Agreement dated November 8, 2024, by Second Amendment to Purchase and Sale Agreement dated December 16, 2024, and by Third Amendment to Purchase and Sale Agreement dated April 1, 2025 (the “**PSA**”) with respect to the purchase and sale of certain real property more particularly described in the PSA (the “**Property**”).

B. City and Developer wish to amend the PSA because the Developer’s program has been modified to a two-phase development, necessitating a restatement of the proposed project and incorporation of two property closings.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals; Definitions. Each of the foregoing recitals are incorporated into and made a part of this Amendment by this reference. All capitalized terms used in this Amendment shall have the meanings ascribed in the Agreement unless otherwise defined in this Amendment.

2. Completion of Due Diligence Period. City and Developer agree and confirm that all due diligence by Developer is complete. Developer’s right to terminate without cause has therefore expired.

3. Project Program. The parties acknowledge that Developer’s proposed development program has been revised to a phased development as follows:

- a) **Phase 1:** No less than one hundred thirty-five (135) multifamily dwelling units, together with approximately one hundred fifty-five (155) parking spaces and certain initial public improvements, as agreed to in the MDA (defined below)
- b) **Phase 2:** No less than one hundred seven (107) multifamily dwelling units, together with approximately ninety-nine (99) parking spaces and remaining contemplated improvements. Developer’s right to Phase 2 is subject to the Option Payments required in the Amended and Restated Master Development Agreement (the “**MDA**”). Per the MDA, nothing herein shall obligate the Developer to proceed with Phase 2 until Developer, acting reasonably and in good faith, determines that financing, market, and development conditions support commencement of Phase 2.

The Project is further described in the MDA between the parties, as amended from time to time, including the phased development plans and related exhibits incorporated therein. All unit counts, parking counts, layouts, phasing plans, and improvements are approximate and subject to change

based on final design, engineering, permitting, financing, market conditions, and applicable governmental approvals.

4. Purchase Price. Section 2.1(a) of the PSA is deleted in its entirety and replaced as follows:

The total Purchase Price for the Property shall be Thirty-Five Thousand Dollars (\$35,000.00) per unit for Phase I with no less than 135 units and, if the option is exercised, Twenty-Five Thousand Dollars (\$25,000.00) per unit for Phase 2 with no less than 107 units, as set forth in the MDA.

- a) Developer shall receive a demolition credit in the amount of Seven Hundred Thousand Dollars (\$700,000.00), which shall be applied in full at the Phase 1 Closing, unless otherwise mutually agreed.
- b) Developer shall receive a credit against the Purchase Price for the actual out-of-pocket hard and soft costs incurred by Developer in connection with the design and construction of the dog park improvements required under the MDA, including reasonable engineering, permitting, sitework, utility, landscaping, and related improvement costs, up to a maximum amount of \$1,200,000.00, which a credit of \$600,000.00 shall be applied at the Phase 1 Closing, and a credit of \$600,000.00 shall be applied at the Phase 2 Closing, or reimbursed in such other manner as mutually agreed by the parties.

5. Closing. Section 2.1 (b) of the PSA is deleted in its entirety and replaced as follows:

Provided that all conditions precedent to closing by the parties have been satisfied or waived, the transactions contemplated herein shall occur in one or more closings corresponding to the phases of the Project.

- a) Phase 1 Closing shall occur on or before thirty (30) days following issuance of a building permit for Phase 1, but in no case later than March 31, 2027.
- b) Phase 2 Closing may occur at any time following satisfaction of the applicable conditions precedent, but in no event later than thirty-six (36) months following issuance of the last building permit (if more than one) for Phase 1.
- c) The Phase 2 Closing is subject to certain Option Payments as set forth in the MDA.
- d) Prior to each applicable closing, Developer shall prepare, at its cost, any required legal descriptions, subdivision plans, lot line adjustments, or related documents necessary to facilitate the applicable phase closing, and City shall reasonably cooperate in reviewing and executing the same.
- e) Either party may extend any applicable closing date once for sixty (60) business days by written notice. Thereafter, the parties may mutually agree to additional extensions.

6. Notice. Section 5.3 is amended to delete the reference to Drew Melville and replace with:

With a copy to:

[Andrew A. Prolman, Esquire](#)
[Prunier & Prolman, PLLC](#)
[20 Trafalgar Square, Suite 100](#)
[Nashua, NH 03063](#)
[Phone: 603-883-8900](#)
[Email: arolman@prunierlaw.com](#)

7. General. The terms and provisions of this Amendment shall be governed and construed in accordance with the laws of the State of New Hampshire. City and Developer agree that, except as modified by this Amendment, the Agreement remains in full force and effect in accordance with its terms. In the event of any conflict between this Amendment and the Agreement, the terms of this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of City and Developer and their respective successors, and assigns.

[SIGNATURE PAGES FOLLOW]

WHEREFORE, City and Developer have caused this Amendment to be executed as of the day and year first above written.

CITY OF NASHUA, NEW HAMPSHIRE

James W. Donchess, Mayor, duly authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH**

I, the undersigned, a Notary Public of the State and County aforesaid, do hereby certify that James W. Donchess personally came before me this day and acknowledged under seal that he is the Mayor of the City of Nashua, and acknowledged, on behalf of the City, the due execution of the foregoing instrument.

WITNESS my hand and official seal, this _____ day of _____, 2026.

Notary Public

My commission expires:

(SEAL)

LANSING MELBOURNE GROUP, LLC,
a Florida limited liability company

Peter Flotz, Manager, duly authorized

STATE OF FLORIDA
COUNTY OF BROWARD

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Peter Flotz personally came before me this day and acknowledged under seal that he is Manager of LANSING MELBOURNE GROUP, LLC, a Florida limited liability company, and acknowledged, on behalf of the company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2026.

Notary Public

My commission expires:

(SEAL)