

FINANCE COMMITTEE

NOVEMBER 3, 2021

7:15 or immediately after Pennichuck Special Water Cte

Aldermanic Chamber and Zoom

Join Zoom Meeting: <https://us02web.zoom.us/j/85019442569?pwd=dklvZ21vUG1VNVNDQ0pEV0FLVEVqUT09>
Meeting ID: 850 1944 2569 Passcode: 299931

By telephone: 1-929-205-6099 Meeting ID: 850 1944 2569 Passcode: 299931

If there is a problem with the audio, please dial 603-589-3329 to advise.

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Kelly Parkinson, Purchasing Manager

Re: Snow Removal in the amount not to exceed \$40,000 funded from accounts 54207 Snow Plowing Services (Economic Development)

From: Kelly Parkinson, Purchasing Manager

Re: Feasibility Study for the Millyard land in the amount not to exceed \$100,000 funded from accounts 53142 Consulting Services/Escrow (Economic Development)

From: Kelly Parkinson, Purchasing Manager

Re: Feasibility Study for Elm Street Middle School in the amount not to exceed \$120,000 funded from accounts 53142 Consulting Services/Escrow (Economic Development)

From: Kelly Parkinson, Purchasing Manager

Re: Architectural Design/Streetscaping of West Pearl Street in the amount not to exceed \$100,000 funded from accounts 53142 Consulting Services/Downtown Improvement Committee & Economic Development Escrow (Economic Development)

From: Kelly Parkinson, Purchasing Manager

Re: Change Order for Nashua Conservation Commission Technical Assistance Contract

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

NEW BUSINESS – ORDINANCES

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

NON-PUBLIC SESSION

ADJOURNMENT



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

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

October 27, 2021
Memo #22-181

TO: Mayor Donchess
Finance Committee

SUBJECT: Snow Removal in the amount not to exceed \$40,000 funded from accounts 54207 Snow Plowing Services

Please see attached communications from Tim Cummings, Director of Economic Development, dated November 3, 2021 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Snow Removal and Salt/Sand treatment as needed for 18 City Parking Lots
Value: not to exceed \$40,000
Vendor: Doty Group
Department: 166 Parking
Source Fund: 54207 Snow Plowing Services

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bidding RFP for this project was issued on October 5, 2021 and the following bids were received:

Vendor	Location	Amount	Note
The Doty Group	Hollis, NH	\$125/hr	

We recommend this bid to be awarded to the lowest total cost vendor who met the RFP specified requirements. The Economic Development Division, and the Purchasing Department respectfully request your approval of this contract.

Regards,
Kelly Parkinson
Purchasing Manager

Cc: T Cummings
J Graziano



THE CITY OF NASHUA

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

"The Gate City"

TO: Kelly Parkinson, Purchasing Manager

FROM: Tim Cummings, Director of Economic Development

DATE: November 3, 2021

SUBJECT: FY22 Snow Plowing Contract (Value not to exceed: \$40,000)
Department: 166 Parking

The Economic Development Division is requesting approval to contract with The Doty Group, Inc. of Hollis, New Hampshire for snow plowing and optional sand/salt treatment and snow removal services in the amount not to exceed \$40,000.

The contract's service area is the 18 parking lots under the responsibility of the Parking Department. The contractor intends to provide snow plowing services through May 15, 2022. The contractor will provide salt/sand treatment services removal of snow on an as-needed basis.

Doty Group is a reputable and responsible company. Nashua has used them successfully during the previous winter.

Thank You.

BID SCHEDULE --- PRICING SUMMARY SHEET

IFB0862-100421

Snow Plowing Services for Municipal Parking Lots

PRICING

Two plow vehicles per storm are required, at hourly rates inclusive of fuel charges.

Vehicle #1	
Hourly Rate	\$ 125.00
Description:	<i>White</i>
Type	<i>PICK up truck</i>
Year, Make & Model	<i>2007 Ford F350</i>
Capacity	
Blade Size	<i>9-foot</i>
Registration Number	<i>NH 4102038</i>

Vehicle #2	
Hourly Rate	\$ 125.00
Description:	<i>Gold</i>
Type	<i>PICK up truck</i>
Year, Make & Model	<i>2001 Ford F350</i>
Capacity	
Blade Size	<i>9-foot</i>
Registration Number	<i>NH 4347248</i>

Vehicle #3 (If approved by the City)	
Hourly Rate	\$ 125.00
Description:	
Type	
Year, Make & Model	
Capacity	
Blade Size	
Registration Number	

Snow Removal Vehicles, hourly rates inclusive of fuel charges.

Vehicle #1	
Hourly Rate	\$ 135.00
Description:	
Type	<i>Same as above</i>
Year, Make & Model	
Capacity	

Registration Number	
---------------------	--

Vehicle #2	
Hourly Rate	\$ 135.00
Description:	
Type	
Year, Make & Model	
Capacity	
Registration Number	

Vehicle #3 (if needed)	
Hourly Rate	\$ 135.00
Description:	
Type	
Year, Make & Model	
Capacity	
Registration Number	

Salt/Sand Spreader Vehicle, hourly rates inclusive of fuel charges

Vehicle #1	
Hourly Rate	\$ 250.00
Description:	
Type	
Year, Make & Model	
Capacity	
Registration Number	

Vehicle #2	
Hourly Rate	\$ 250.00
Description:	
Type	
Year, Make & Model	
Capacity	
Registration Number	

Number of full time contractor staff including quantity of snow plowing drivers: 25

Communications concerning this RFP shall be addressed to:

Name:	The Doty Group, Inc. - Morgan OR Nate Doty
Address:	Billing: 26 Plain Rd, Hollis NH 03049

Phone:	603.490.0103 or 603.769.9295
Email:	contactthedotygroup@gmail.com

Primary Contact for Snow Plowing and Removal Services:	
Vendor Name	The Doty Group, Inc.
Name & Title of individual	Nate Doty, VP
Address	26 Plain Rd, Hollis NH 03049
Telephone	603.490.0103
Email	contactthedotygroup@gmail.com
Signature:	Nathan Doty

REFERENCES (Municipal and State References a plus):

References (Municipal and State References preferred)	
Name of Organization	
Name & Title of individual	
Telephone	
Email	
Name of Organization	
Name & Title of individual	
Telephone	
Email	
Name of Organization	
Name & Title of individual	
Telephone	
Email	
Name of Organization	
Name & Title of individual	
Telephone	
Email	
Name of Organization	
Name & Title of individual	

Telephone	
Email	

Submitted by:	
Name of Organization	The Doty Group, Inc.
Name & Title of individual	Morgan Doty, Treasurer
Address	26 Plain Rd, Hollis NH 03049
Telephone	603.490.0103
Email	contactthedotygroup@gmail.com

Morgan Doty

Signature

9/28/21

Date

Subject: **Snow Plowing Agreement**

AGREEMENT

The City of Nashua, New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

THIS AGREEMENT (the “Agreement”) dated as of _____ (the “Effective Date”), is between the CITY OF NASHUA, NEW HAMPSHIRE, c/o of the Parking Department, 229 Main Street, Nashua NH 03060, a New Hampshire municipal corporation, phone: 603-589-3106 (“City”), and The Doty Group, Merrimack, NH Phone: (603) 490-0103 (“Contractor”). Each of City and Contractor are sometimes referred to herein as a “Party” and collectively as the “Parties”.

2. CONTRACTOR CONTRACT MANAGER

Contractor shall designate a Contract Manager who shall be responsible for all contractual authorization and administration under the Contract. This person is:

Contract Manager: Nathan Doty
Title: Vice President
Address: 26 Plan Road, Hollis, NH 03049
Tel : 603-490-0103
Email : contactthedotygroup@gmail.com

3. CITY PURHCASING MANAGER

The City shall designate a Contract Manager who shall function as the City’s representative with regard to Contract administration. This person is:

Contract Manager: Kelly Parkinson
Title: Purchasing Manager
Address: 229 Main Street
Nashua, NH 03060
Tel : 603-589-3333
Email : Parkinsonk@nashuanh.gov

4. **SCOPE OF WORK**

Services shall include snow plowing, salt and sand treatment, and removal services. Snow plowing services shall be conducted within one hour after accumulation of snow greater than two (2) inches. Salt and sand treatment may be required prior to and following each storm but will be dependent on each storm as to whether or not treatment will be required, prior to or following a storm. Contractor must be available for salt and sand treatment and snow removal services on an as-needed basis to be determined by the Parking Manager. The Contractor shall perform routine maintenance and repair on all equipment required to provide snow plowing and removal service. All labor, tools, transportation, disposal costs, materials, equipment and permits required to perform snow plowing and removal shall be the responsibility of the Contractor. Contractor shall clearly identify areas such as, but not limited to, curbing, shrubs, manholes, fencing, guardrails, electrical junction boxes or any other areas that are susceptible to damage when concealed by snowfall prior to the first snowfall.

5. **TERM & EXTENSION**

This agreement will be from the date approved by the City of Nashua Purchasing Department and terminating on May 15, 2022. This agreement may be extended for additional periods under the same terms, conditions and pricing structure upon the written agreement of the Contractor and the City of Nashua, NH.

6. **DAMAGE**

- A. The Contractor agrees to indemnify and hold the City of Nashua, NH harmless from any and all liability, claims, and actions of whatever kind arising out of injuries or damage caused, arising from, resulting or due to its performance of its snow plowing services.
- B. The Contractor agrees that any damage to building(s), materials, equipment or other property caused, arising from, resulting or due to its performance of the snow plowing service will be repaired or replaced at its sole expense.

7. **INSURANCE**

1. The Contractor shall carry the following minimum requirements relating to insurance coverage and policy limits:
 - General Liability - \$1,000,000
 - Motor Vehicle - \$1,000,000 combined single limit for bodily injury and property damage
 - Workers' Compensation as required by the NH statute

The agent/insurance carrier must issue the certificate of insurance. **The declaration page of a personal auto policy is not acceptable. Insurance coverage must be provided via a commercial policy.** The agent/insurance carrier must be licensed in the City of Nashua, New Hampshire and acceptable to the City of Nashua, New Hampshire.

8. INSURANCE CERTIFICATES

1. Insurance certificates evidencing the above are to be furnished the City as time of execution of the contract and shall provide for not less than 30 days prior notice to the City of any cancellation or major change in the policies.
2. The Risk Management Department is to be furnished a copy of the following documentation:
 - A copy of current motor vehicle registrations
 - A copy of all operators' current drivers' licenses
 - The Parking Department is to verify that all vehicles to be operated have current inspection stickers; this needs to be noted when writing to the Risk Management Department
3. The City of Nashua must be named as an additional insured on all certificates.
4. The Contractor must provide proof of compliance meeting Federal Department of Transportation Commercial Driver Licensing requirements as to drug and alcohol testing.
5. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this prequalification shall provide the required coverage and shall not be suspended, voided, cancelled, or reduced in coverage in limits except after thirty (30) days prior written notice has been given to the City of Nashua Risk Management Department. Such notice shall be sent directly to The City of Nashua Risk Management Department, PO Box 2019, 229 Main Street, Nashua, NH 03061-2019 and shall be sent by certified mail, return receipt requested.
6. The Contractor agrees to provide City of Nashua, NH with the services indicated in the Exhibit A of this agreement at the prices as listed below.

Two vehicles per storm are required at the hourly rates listed below. The use of a third vehicle must be approved by the Parking Operations Manager or person designated by said Manager.

1. \$125.00/hr Ford Pick Up (F350)
2. \$125.00/hr Ford Pick Up (F350)
3. \$125.00/hr Ford Pick Up (F250/F350)
4. \$135.00/hr Snow Removal Vehicle
5. \$250.00/hr Salt/Sand Spreader Vehicle

Lot Locations

1. City Hall Lots & Loading Dock
2. Maple Street Lot
3. Garden Street & Lot
4. School Street Lot
5. High Street Lot
6. Factory Street Lot

7. Water Street Lot
8. Le Parc Renaissance Lot
9. Railroad Square Lot
10. Pearson/Park Avenue Lot
11. Library Main Lot
12. Library Annex Lot
13. Library Employee Lot
14. Spring Street Lot
15. Senior Center Lot (West Side Lot Only)
16. Conway Arena Lot
17. Crown Street Parking Ride Lot
18. Pine Street Ext. Lot

9. PAYMENTS

The Contractor shall invoice the requesting agency within seven (7) days of service. Payment shall be paid in full within thirty (30) days after receipt of the properly documented invoice and acceptance of the work to the City of Nashua Parking Department's satisfaction.

The invoice shall be sent to the address of the using agency under agreement.

10. GENERAL REQUIREMENTS FOR SNOW PLOWING SERVICES

1. Contractor shall ensure that all equipment used is properly registered and inspected. The City reserves the right to verify this information.
2. Upon Notice of Acceptance, Contractor must provide phone numbers where employees can be reached. The inability of the City to make contact with Contractor within a reasonable amount of time is cause for the City to use other contractors.
3. All snow plowing operations, including the location and timing of snow plowing and treatment, will be scheduled directly by the Parking Manager or authorized representative.
4. The Contractor shall provide services in order to ensure the snow is plowed to designated areas in each of the municipal parking lots per the direction of the Parking Department. The Contractor shall ensure that all leased parking spaces remain accessible to lease parking customers following the snow event. If, for any reason, a leased parking space must be utilized for storage of snow, the Contractor must contact the Parking Department immediately.

5. Snow removal operations will be at the discretion and scheduled directly by the Parking Department. The contractor should have the proper equipment available to load the plowed snow into a transport vehicle, and then take that vehicle to a City of Nashua approved snow dump site.
6. All equipment must be equipped with a revolving or flashing amber light.
7. Subcontracting is not allowed.
8. The City shall have no obligation to engage the services of the Contractor for a specified number of times.
9. Contractor shall be knowledgeable and comply with all federal, state, and local laws, rules, regulations, and ordinances that may be applicable to the operation of the equipment provided by Contractor for snow plowing services.
10. The Contractor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform snow plowing at all 18 (eighteen) municipal parking facilities, in a workman like manner and within the time specified. It shall complete the entire work to the satisfaction of the Parking Manager and in accordance with the specifications herein mentioned, at the prices herein agreed upon and fixed therefore.
11. The Contractor shall conduct its work so as to interfere as little as possible with private business and public travel. It shall, at its own expense, wherever necessary or required, furnish safety devices and take such other precautions as may be necessary to protect life and property.
12. The Contractor shall be responsible for all work done under this contract; for the protection of the work; and, for preventing injuries to persons and damage to property and utilities on or about the snow plowing work. It shall in no way, be relieved of its responsibilities by any right of the Parking Manager to give permission or issue orders relating to any part of the work, or by any such permission given or orders issued, or by failure of the Parking Manager to give such permission or such orders.
13. The Contractor shall bear all losses resulting to him or to the owner on account of the amount or character of the work, or because of the nature of the land in or on which the work is done is different from what was estimated or expected, or account of the weather, elements or other causes. The contractor shall assume the defense of all claims of whatsoever character against the Contractor of the City, and indemnify, save harmless, and insure the City, its officer or agents, against all claims arising out of injury or damage to

persons, corporations or property, whether said claims are for unavoidable damage or not, and from all claims relating to labor and equipment furnished for the snow plowing work.

PARKING LOT SNOW REMOVAL PRIORITY LIST*

1. SPRING STREET LOT
2. SENIOR CENTER LOT
3. LIBRARY LOT
4. LIBRARY LOT ANNEX
5. LIBRARY STAFF LOT
6. CITY HALL LOTS
7. GARDEN STREET & LOT
8. LE PARK RENAISSANCE LOT
9. WATER STREET LOT
10. PEARSON/PARK AVE. LOT
11. FACTORY STREET LOT
12. RAILROAD SQAURE LOT
13. MAPLE STREET LOT
14. SCHOOL STREET LOT
15. HIGH STREET LOT (55 TAXI)
16. CONWAY ARENA LOT
17. CROWN STREET PARK AND RIDE LOT
18. PINE STREET EXT. LOT

*Subject to Change based on timing/duration of storm.

11. GOVERNING LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of New Hampshire, excluding any choice of law or conflicts of law rules that would result in the application of the laws of a different jurisdiction.

12. SEVERABILITY.

If any provision of this Agreement is determined to be void, unlawful, or otherwise unenforceable, that provision shall be severed from the remainder of this Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and this Agreement, as so modified, shall continue to be in full force and effect.

13. **AMENDMENT.**

No modification, amendment, or other change to this Agreement shall be effective unless agreed to in a writing signed by each of the Parties.

14. **NO WAIVER.**

Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies in that or any other instance. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

15. **ENTIRE AGREEMENT.**

This Agreement and any amendments to this Agreement contain the complete agreement between the Parties with respect to the subject matter of this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement, including any letters of intent, term sheets or similar proposals exchanged by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the Effective Date.

CITY OF NASHUA

By: Jim Donchess, duly authorized

Signature:

Title: _____ Mayor

Date: _____

Contractor: _____

By: Nathan Doty, The Doty Group

Signature:

Title: _____ Authorized

Date: _____



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

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

October 27, 2021
Memo #22-182

TO: Mayor Donchess
Finance Committee

SUBJECT: Feasibility Study for the Millyard land in the amount not to exceed \$100,000 funded from accounts 53142 Consulting Services/Escrow

Please see attached communications from Tim Cummings, Director of Economic Development, dated October 25, 2021 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Feasibility Study/Design Services Contract for the Millyard land
Value: not to exceed \$100,000
Vendor: Icon Architecture
Department: 183 Economic Development
Source Fund: 53142 Consulting Services/Economic Development Escrow Funds

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bidding RFP for this project was issued on April 26, 2021 and the following bids were received:

Vendor	Location	Amount	Note
Marvel Design	New York, NY	\$138,250	
Icon Architecture	Boston, MA	\$50,000	Revised Bid Received 10/26/21 for \$105,000
NBBJ	Boston, MA	\$127,941	
DMA	Harvard, MA	\$73,500	

We recommend this bid to be awarded to the lowest total cost vendor who met the RFP specified requirements. The Economic Development Division, and the Purchasing Department respectfully request your approval of this contract.

Regards,
Kelly Parkinson
Purchasing Manager

Cc: T Cummings
J Graziano



THE CITY OF NASHUA

Office of Economic Development

"The Gate City"

TO: Jim Donchess, Mayor
FROM: Tim Cummings, Economic Development Director
Date: October 25, 2021
RE: Approval of ICON Architecture Contract A Feasibility Study Of Millyard Land

The enclosed documents include a contract for your approval where we will be looking to enter into a feasibility study with ICON Architecture. The services sought focus on architectural design services to help develop a concept plan for the remnant land leftover in the Nashua Mill Yard owned by the city. The primary deliverable for this initiative is the development of a concept plan on 3.5 to 4.0 acres of land. A map delineating the primary study area has been included.

There will be a secondary deliverable in that a very high-level master plan for the ancillary property owned by the city is also expected. The purpose of this request is to outline potential building envelopes on the available land area. Furthermore, the City will be looking for content that demonstrates a certain aesthetic design to act as an inspiration for future development in the Mill Yard. This plan should act as an overall strategic plan for all the various pieces of land of interest.

These services were competitively procured and the source of funds is from a calendar year 2021 escrow for \$105,000.

THANK YOU.



101 SUMMER ST
BOSTON MA
02110

ICONARCH.COM
617.451.3333

May 24, 2021

REV October 26, 2021

Kelly Parkinson

Purchasing Manager

City of Nashua

229 Main Street,

Nashua, NH 03060

RE: Proposal for RFP 0022-052421

Architectural Design Services for Nashua Millyard Concept Plan

Dear Kelly:

ICON is pleased to submit this proposal for your Concept Plan at the Nashua Millyard. We have assembled a team with the expertise, local knowledge, and experience-based understanding of the regional development community to position the City well for realization of a plan that will optimally benefit the community.

Why ICON

ICON Architecture, Inc., is a women-owned, Boston-based firm of 40 staff with award-winning work focused on sustainable urban development—creating new paradigms for living and working in numerous transit-oriented developments. The firm's projects mix uses—market-rate housing with workforce units, artist live/work communities with retail/office incubator environments, and mixed-use developments engaging their neighborhood edges. ICON has been responsible for the design of over 18,000 units of multifamily housing throughout New England. We bring the right experience to move this project forward expediently and within budget:

- **Positive working relationship with City Planning Agencies** – ICON has a long and successful relationship developing designs with City Planning Departments, and is

currently working with the City of Nashua on several exciting projects. Our concept designs are based in our experience and the realities of spatial and construction requirements, while promoting an engaging vision. Most of our projects require zoning relief, and we are experienced negotiating needed relief provisions.

- **Deep experience designing large developments on multi-acre sites** – ICON has an enviable record designing multiple mixed-income developments on multi-acre sites, blending an array of building types and uses. We understand the nuances of building in multiple phases, establishing a street and circulation network, and creating a desirable living environment “whole cloth”. Our **Maverick Landing** re-established the East Boston waterfront neighborhood with 496 mixed-income apartments and condos; our **Washington Beech** transformed a multi-block section of Roslindale into 216 apartments in a mix of LEED Gold low rise and mid-rise. **Maxwell’s Green** reinvigorated an abandoned 5.5 acre industrial site into a linked community of 200 units while **Oak Grove Village** imagined a 15-acre site for 550 units within a 5 minute walk to transit. Additional example projects are provided later in our proposal.
- **ICON has a proven track record “right sizing” developments to get them built** – ICON excels at designing striking buildings that employ efficient and cost-effective design to meet realistic budgets. We understand how to make the most of construction typologies to fit within your budget and how to design buildings to improve efficiency ratios while providing the mix and the amenities to meet the market and the proforma.

At the heart of ICON’s practice is the belief that great design begins with collaboration, so we work well with neighbors and city officials to understand the nuances of a site, and to balance community concerns for development. We can’t always please everyone, but we do try to help everyone understand why the choices are made and build consensus around them. It’s that mutually engaging vision behind each of our designs that allows us to create memorable places—we’re making better places for the people who build their lives there.

ICON would be delighted to be a part of creating and securing a mutual vision for the Nashua Millyard. We hope that you find this proposal appropriate to your needs on this project. Please do not hesitate to call to discuss any questions you might have regarding this proposal.

Sincerely,



ICON Architecture, Inc.
Ned Collier, AIA, LEED AP
Principal
Education + Institutional Practice Leader



ICON Architecture, Inc.
Kendra Halliwell AIA, LEED AP
Associate Principal
Housing Practice Leader



1. Core Project Team

ICON Architecture is a 40-person, Boston-based, women-owned (WBE) architectural practice focused on sustainable, transformative projects that create new paradigms for living. Our designs range from infill transit-oriented development to innovative adaptive reuse, creating sustainable communities that energize residents and communities. Our projects creatively reposition aging buildings and sites to celebrate their rich history while embracing contemporary life. A leader in innovation, ICON work engages sustainable building practices, such as Passive House and Fitwell, and efficient construction methods, such as modular and mass timber.

ICON delivers projects that not only meet program and budget goals, but deliver enduring value. Regardless of size, each project demonstrates sensitivity to context and displays our ability to work thoughtfully with residents, neighbors, and administrators to achieve quality planning and design with superior lasting value. We have extensive experience working with public agencies and both public and private developers (sometimes together!) throughout the northeast, and we have designed and built over 18,000 housing units. We have deep experience designing for unique sites and programs, with an appreciation for the rich architectural fabric of New England downtowns.

ICON's projects have been case studies for nationally distributed books on urban housing, published by the Urban Land Institute, Harvard University Press, and Global Green. Our work has won numerous awards, multiple Builders Choice Design Awards, a Governor's Smart Growth Leadership Award, and multiple Preservation Achievement Awards from the Boston Preservation Alliance and the Massachusetts Historical Commission.

Key Staff:

ICON Architecture's Design Team will be led by **Kendra Halliwell AIA, LEED AP**. Kendra has extensive design and permitting experience in communities across New England, with depth of knowledge in mixed-use and sustainable, cost-effective construction and will be the point of contact throughout the project. **Ned Collier, AIA**, will collaborate throughout the design process, providing insight into design opportunities and facilitating communication in the programming and concept phases. **Michelle Apigian, AIA, AICP** will bring her knowledge of sustainable design and construction into discussions of the site options, preferred option refinement and the final document.



ICON has assembled the following team for the proposed Nashua Mill Yard Concept Study:

- **Real Estate Development Consultant: *Abramson & Associates*** -- Barry M. Abramson will provide real estate evaluation of the market and financial feasibility and highest and best use, estimation of potential disposition revenue and net benefits to the City and collaborate in concept planning.
- **Cost Estimating Team: *Harvey Construction Company*** – Carl Dubois will assist the team through the early study phases to help guide informed decisions regarding construction methods and costs.
- **Civil Engineering + Site Layout: *Hayner/Swanson*** –Jim Petropulos is currently working on several similarly scaled projects in the Nashua area, and he and his team will provide insight in understanding site constraints.
- **Legal Consultant: *Prunier & Prolman, PA*** – Andrew A. Prolman will support the team.

2. Approach to the Scope of Work

The goal of the Concept Study is to create an inspiring and realistic vision for the reuse of the 3 ½ -4 acre Nashua Mill Yard, providing a basis for a future Developer RFP. This process will involve an iterative development of the site plan, financial evaluations, conceptual building plans, and imagery. The following proposed approach to scope and interim deliverables are subject to development through discussion with the City. They represent what we understand will be needed to develop the final deliverable, but can be adapted to fit the City's needs and expectations. More broadly, we will provide a very high level master plan for the ancillary property owned by the City in the Mill Yard.

For the sake of cost-effectiveness and given our general understanding of the development market and site appropriateness, the proposed scope assumes that the most likely highest and best use will be some form of multi-family residential, with the analysis focusing on variations of that general use category in terms of:

- **Rental versus Homeownership** – Market analysis may imply different unit sizing and parking treatments.
- **Building typologies, forms and magnitudes** – We will consider wood frame, podium, modular, townhome, or midrise types of structure, each reviewed for cost-efficiency and use.
- **Parking strategy** – Always a primary topic of conversation, what are minimums required for a marketable development? Is surface parking versus alternate forms of structured parking viable? The team will review options to include variations for parking on the site, including surface parking, under a residential or mixed-use building or in a free-standing deck.
- **Mix of Uses** – We will explore the possibility of including ancillary other uses such as ground floor commercial.



Three alternative development concepts shall be formulated for highest and best use analysis which shall be evaluated from three perspectives:

- **Community benefits** - focusing on non-financial considerations such as design, contribution to open space, expansion of the City's housing or business options or non-profit community-supporting services and amenities and amenities, Pedestrian connections to downtown and to riverside open space will be paramount to the success of this development. Are there any city agencies or ground level program elements that the City would like to see?
- **Real estate financial benefits** - in terms of financial feasibility, potential land disposition revenue and marketability, timing and risk
- **Public financial benefits** - integrating the above plus real estate tax revenue and any indicated required public investments.

Scope of Service Deliverables and Project Schedule:

1. Concept Planning (4 weeks; January/ February, 2022)

- Three Development Concept Site Plan Options – including code considerations, unit count/ program use, connectivity & parking count. Working with the real estate professional and civil engineer, the design team will test program and building massing options, establish design character, and review approaches to pedestrian and vehicular circulation. Space and program requirements will be reviewed for civil/ legal feasibility.
- ICON's team will be led by the Principal and Associate Principal, anticipating approximately 150 hours for Concept Planning Phase and approximately half staff time.
- Refining the options, the civil engineer will prepare parking analysis based on the existing and two proposed development options, including emergency vehicle and loading access to the site. Site plan diagrams will convey street, curb and intersection upgrades if deemed necessary. Extents include adjacent intersections for traffic lights or other mitigation. The design and engineering team will look to the city for coordination with utility providers.
- ICON's team includes one Site Walk to review the site with city stakeholders.
- The design team (Arch/ Civil) shall participate in weekly conference/zoom calls for a total of 6 coordination meetings.
- ICON shall lead three meetings with stakeholders during the exploration of options.
- One (1) Virtual Meeting Is Proposed w/ staff in which findings of alternatives / evaluation shall be presented & One preferred concept selected and refined as discussed.
- One (1) Presentation / Meeting with Public Boards and/or Elected Officials to Present Preferred Scheme
- Design sketches and massing studies will initiate discussions regarding the project.



- Preferred Scheme -- One Site Plan Option will be refined and illustrated after review. (2 weeks; February, 2022)
 - Building Unit and Area Matrix – Provided calculating the unit mix, unit NSF and building GSF.
 - Initial Zoning Analysis – Prepared for review. Nashua Land Use Code and NHDES regulations shall be reviewed to determine their impacts to the proposed development plan.
 - Based on the Preferred Plan, the civil engineer shall prepare a Preliminary Site Plan of the intended development. The infrastructure analysis shall include grading, utilities (electrical, water, sewer), a preliminary stormwater design and other elements usually included in a site design. Recommendations for changes to the layout due to site conditions shall be brought to the Client’s attention and the necessary adjustments made to the plan.
 - Preparation of a design and permitting timeline will be prepared, including detailed scope of work.
 - 6 street view renderings, one aerial view over google earth, primary elevations to be provided.
 - Flip Book - Summarizing the Concept study process and the findings. The community and stakeholder process and recommendations based on public feedback will be included in brief.
 - Design Guidelines – The design team will develop a document that will provide a framework for the architectural character of future redevelopment of the Mill Yard. Including diagrams and annotated photographs, the Guidelines will convey a unified vision for the Mill Yard’s public realm, preserving the qualities that make it unique, and allowing for contemporary development to succeed.
- 2. Cost Estimate – (Ongoing) Pricing for the Preferred Scheme.** Initial concepts shall be priced based on industry expertise, construction cost from the Cost Estimating team.
- 3. Real Estate Evaluation and Technical Memo for Feasibility/Highest & Best Use Analysis, Estimation of Potential Disposition Revenue and Benefits to City (4-6 weeks; January/February, 2022)**–The real estate component of the highest and best use analysis shall entail the following tasks:
- Review background information, tour the site and environs and meet with City to ensure full understanding of issues and objectives.
 - Conduct a market assessment focusing on multi-family residential, drawing on data and insights from the consultant’s recent work in the market and conducting new research focusing on the opportunity at the subject site, primarily in the form of high-level interviews with



developers and other knowledgeable sources active or potentially interested in the local market. This will include a review of supply, timing/pipeline, market acceptance/performance and other relevant characteristics of comparable/competitive existing properties and proposed projects, views on competitive position of potential development at the subject site, potential interest in the opportunity by and project preferences of potential developers and bases for estimates of market rental and condo pricing and other terms, typical operating expenses and development costs, financing and investment return parameters and market land pricing experience and expectations.

- This task shall also include limited research on potentially appropriate non-residential use to inform its possible inclusion as an ancillary project component or to flag any unanticipated greater potential. If significant potential for such non-residential use is identified, we would inform the City which would determine whether to engage additional services for a more in-depth analysis of such use which could be better scoped and budgeted at that time.
- Research with City tax assessor per unit or per square foot property tax assessments and tax revenues attributable to potential uses and development types.
- Based on the above and evaluations conducted by other team members, collaborate with Icon to formulate three preliminary alternative development concepts and programs.
- Coordinate with cost estimator, ICON and other team members (as well as input from research) to determine typical construction cost estimates on a per unit or square foot basis to apply to alternate development concepts as well as any non-construction costs.
- Estimate feasibility and supportable land/shell cost/potential disposition revenues, marketability, timing, risk, real estate tax revenues, required public investments (if any) and non-financial community benefits for the alternative development concepts.
- For the preferred development concept, integrate detailed construction cost estimate and any refinements in program and design in a detailed financial feasibility analysis yielding estimated supportable land cost/potential disposition revenues, marketability, timing, risk, real estate tax revenues, required public investments (if any) and non-financial community benefits.
- Summarize process, findings and recommendations in a brief executive summary level memorandum or report.
- Participate with team in presentations/meetings over the course of the study to present preliminary findings and facilitate determination of alternative and preferred development concepts and present final



conclusions and plans.



ICON ARCHITECTURE

101 SUMMER ST BOSTON MA 02110

617.451.3333

ICONARCH.COM

4. Community Engagement & Stakeholder Outreach

(January/ February 2022)

- Three virtual meetings are proposed with stakeholders.
- One virtual meeting is proposed with staff in which the findings of the alternatives evaluation shall be presented and one preferred concept will be selected and refinements discussed.
- One presentation/meeting with public board(s) and/or elected officials to present the Preferred Scheme.

3 . FEE PROPOSAL

Scope:

Concept Plan Options, Preferred Scheme, Flip Book

- Architectural Design.....\$23,000
- Real Estate Consultant\$3,000
- Cost Estimate.....\$2,000
- Civil Engineer\$10,000
- Legal On-Call.....\$2,000

Subtotal: \$40,000

Deliverables:

- Street View Renderings (6).....\$12,000
- Rendered Aerial View (1).....\$3,000
- Design Guidelines.....\$10,000

Subtotal: \$25,000

- Real Estate Evaluation and Technical Memo.....\$13,000
- Stakeholder Meetings.....\$24,000
- Expenses (Travel, Printing).....\$3,000

Total \$105,000

Additional Services:

Additional Services:

Additional In-Person Meetings:

- ICON: \$2,000*
- Abramson: \$1,000

Additional Virtual Meetings:

- ICON: \$1,200*



- Abramson: \$600

Renderings: \$3,000 (up to 3 ICON in-house renderings)

*Includes 2 ICON representatives (Principal and PM)

On-Call Consultant Additional Hourly Rates:

- Legal Due Diligence: \$300/hour
- Civil Engineering: \$120-\$185/hour

END OF PROPOSAL





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

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

October 27, 2021
Memo #22-183

TO: Mayor Donchess
Finance Committee

SUBJECT: Feasibility Study for Elm Street Middle School in the amount not to exceed \$120,000
funded from accounts 53142 Consulting Services/Escrow

Please see attached communications from Tim Cummings, Director of Economic Development, dated October 26, 2021 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Feasibility Study/Design Services Contract for Elm Street Middle School
Value: not to exceed \$120,000
Vendor: Marvel Design
Department: 183 Economic Development
Source Fund: 53142 Consulting Services/Economic Development Escrow Funds

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bidding RFP for this project was issued on April 26, 2021 and the following bids were received:

Vendor	Location	Amount	Note
MARVEL	New York, NY	\$148,500	
Icon Architecture	Boston, MA	\$75,000	
Cube 3	Lawrence, MA	\$181,000	
Market Square Architects	Portsmouth, NH	\$55,530	

We recommend this bid to be awarded to the lowest total cost vendor who met the RFP specified requirements. The Economic Development Division, and the Purchasing Department respectfully request your approval of this contract.

Regards,
Kelly Parkinson
Purchasing Manager

Cc: T Cummings
J Graziano



THE CITY OF NASHUA

Office of Economic Development

"The Gate City"

TO: Jim Donchess, Mayor
FROM: Tim Cummings, Economic Development Director
Date: October 26, 2021
RE: Approval of Elm Street Middle School Feasibility Study / Design Contract

The enclosed documents is a contract for your approval where we will be looking to enter into a professional services design contract with Marvel Design. The main driver of this is contract is the need to better understand how the Elm Street Middle School land and/or building can be repurposed, because we will be closing the facility with the creation of the new middle school.

The Office of Economic Development has been charged with developing a strategic plan that looks to put this building and land area back in to productive service. A procurement methodology of a Request For Proposals (“RFP”) was used. This RFP was for consulting services to develop a feasibility study on the Elm Street Middle School.

The feasibility study will analyze all of the relevant factors—including economic, technical, legal, timing, and risk considerations - to ascertain the likelihood of completing the development successfully. The conclusions should include a complete listing of the pros and cons, which will allow for a major investment in a capital outlay to be made with confidence.

In closing, the RFP set out a provision to ensure that the Keefe Auditorium is prioritized understanding the community sentiments around this amenity.

THANK YOU.



CONTRACT FOR PROFESSIONAL SERVICES

TITLE

A CONTRACT BETWEEN

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

Marvel

NAME AND TITLE OF PROFESSIONAL CONSULTANT

145 HUDSON ST. 3RD FL. NEW YORK, NY, 10013

ADDRESS OF PROFESSIONAL CONSULTANT

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

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

WHEREAS, Professional Consultant 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, Contract Time, Fee 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, Professional Consultant 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:

3. PERIOD OF PERFORMANCE. Professional Consultant shall perform and complete all work by 6/30/22____ 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 Consultant shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

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

(\$120,000.00)

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

Unless Professional Consultant has received a written exemption from the City of Nashua, Professional Consultant 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 Consultants right to payment as the City of Nashua may reasonably require. Professional Consultant shall submit monthly requests for payment for services 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 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 Consultant 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 Consultant. The City of Nashua will pay Professional Consultant 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 executed 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:

James Donchess
229 Main St.
Nashua, NH 03060

PROFESSIONAL CONSULTANT REPRESENTATIVE:

Guido Hartray - Marvel
145 Hudson St. 3rd fl.
New York, NY 10013

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 Consultant 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)

(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, "Professional Consultant", and its successors, transferees and assignees (together "Professional Consultant") includes any of the Professional Consultant's consultants, sub consultants, contractors, and subcontractors

2. **PROFESSIONAL CONSULTANT STATUS** The parties agree that Professional Consultant shall have the status of and shall perform all work under this contract as a Professional Consultant, 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 Consultant, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Consultant's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Consultant 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 Consultant 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 Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Consultant warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Consultant 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 Consultant 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 Consultant'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 Consultant shall not in any way relieve Professional Consultant 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 Consultant'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 Consultant shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Consultant 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 Consultant to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Consultant without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Consultant 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 Consultant, 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 Consultant's performance under the contract. Professional Consultant 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 Consultant should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Consultant'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 Consultant for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Consultant of the change.

When Professional Consultant seeks changes, Professional Consultant 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 Consultant should proceed with any or all of the proposed change.

Except as provided in this paragraph, Professional Consultant 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 Consultant in the performance of its work under this contract and that such personnel will be available to Professional Consultant 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

Consultant 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 Consultant also agree to attend all meetings called by the City of Nashua or Professional Consultant to discuss the work under the Contract, and that Professional Consultant 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 Consultant warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Professional Consultant. All future questions Professional Consultant 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 Consultant'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 Consultant prior to having received the City of Nashua's resolution shall be at Professional Consultant's risk and expense. At all times, Professional Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall receive all amounts due and not previously paid to Professional Consultant 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 Consultant in the event of a failure by Professional Consultant 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 Consultant shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Consultant may terminate the contract on 10 calendar days written notice if, through no fault of Professional Consultant, the City of Nashua fails to pay Professional Consultant 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 Consultant 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 Consultant shall receive all amounts due and not previously paid to Professional Consultant 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 Consultant's failure. Professional Consultant 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 Consultant until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Professional Consultant 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 Consultant 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 Consultant 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 Consultant such that Professional Consultant 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 Consultant shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Consultant 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 Consultant's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Consultant'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 Consultant Representative. At all times, Professional Consultant 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 Professional Consultant 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 Professional Consultant for damages because of hindrances or delays in the progress of the work from any cause, and Professional Consultant 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 Consultant 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 Consultant 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 Consultant are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Consultant under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Consultant. Professional Consultant shall require Subcontractors to carry appropriate and lawful amounts of insurance for the services they are providing. Professional Consultant will ensure compliance with this section and shall receive valid certificates of insurance from all Subcontractors as proof that coverage is in place..

Professional Consultant 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 Consultant 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 Consultant 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 Consultant of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Professional Consultant 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 Consultant 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 Consultant or anyone employed, directed, or supervised by Professional Consultant.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Professional Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant 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 Consultant. Professional Consultant shall have no claim of any sort to the unexpended funds.

14. **COMPENSATION** Review by the City of Nashua of Professional Consultant'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 Consultant to submit additional information. Unless the City of Nashua, in its sole discretion, decides otherwise, the City of Nashua shall pay Professional Consultant in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. **COMPLIANCE WITH APPLICABLE LAWS** Professional Consultant, 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 Consultant 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 Consultant agrees to the following terms. Professional Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant under this contract.

In connection with the performance of work under this contract, Professional Consultant 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 Consultant 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 Consultant shall constitute a material breach of the contract.

17. **ENDORSEMENT** Professional Consultant shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Consultant or under its direction as required under the laws of the State of New Hampshire.
18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Consultant 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 Consultant 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 Consultant 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 Consultant's expense, by Professional Consultant 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 Consultant, 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 Consultant in the performance of its obligations under this contract must be retained by Professional Consultant 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 Consultant shall promptly remit and deliver the materials, at Professional Consultant's expense, to the City of Nashua. Professional Consultant shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Consultant's obligations under this contract without the prior written consent of the City of Nashua.

21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Consultant expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Consultant (including those remitted to the City of Nashua by Professional Consultant 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 Consultant 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 Consultant. The City of Nashua shall have the right to reproduce any such materials.

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

Professional Consultant 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. Notwithstanding any of the foregoing, any use of Architect's Instruments of Service without the professional involvement of Architect shall be at the sole risk without liability to Architect.

22. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Consultant 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 Consultant in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Consultant with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant. If any such interest comes to the attention of Professional Consultant at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Professional Consultant 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 Consultant 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 Consultant (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 Consultant shall refund to the City of Nashua any profits realized under this contract, and Professional Consultant 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.

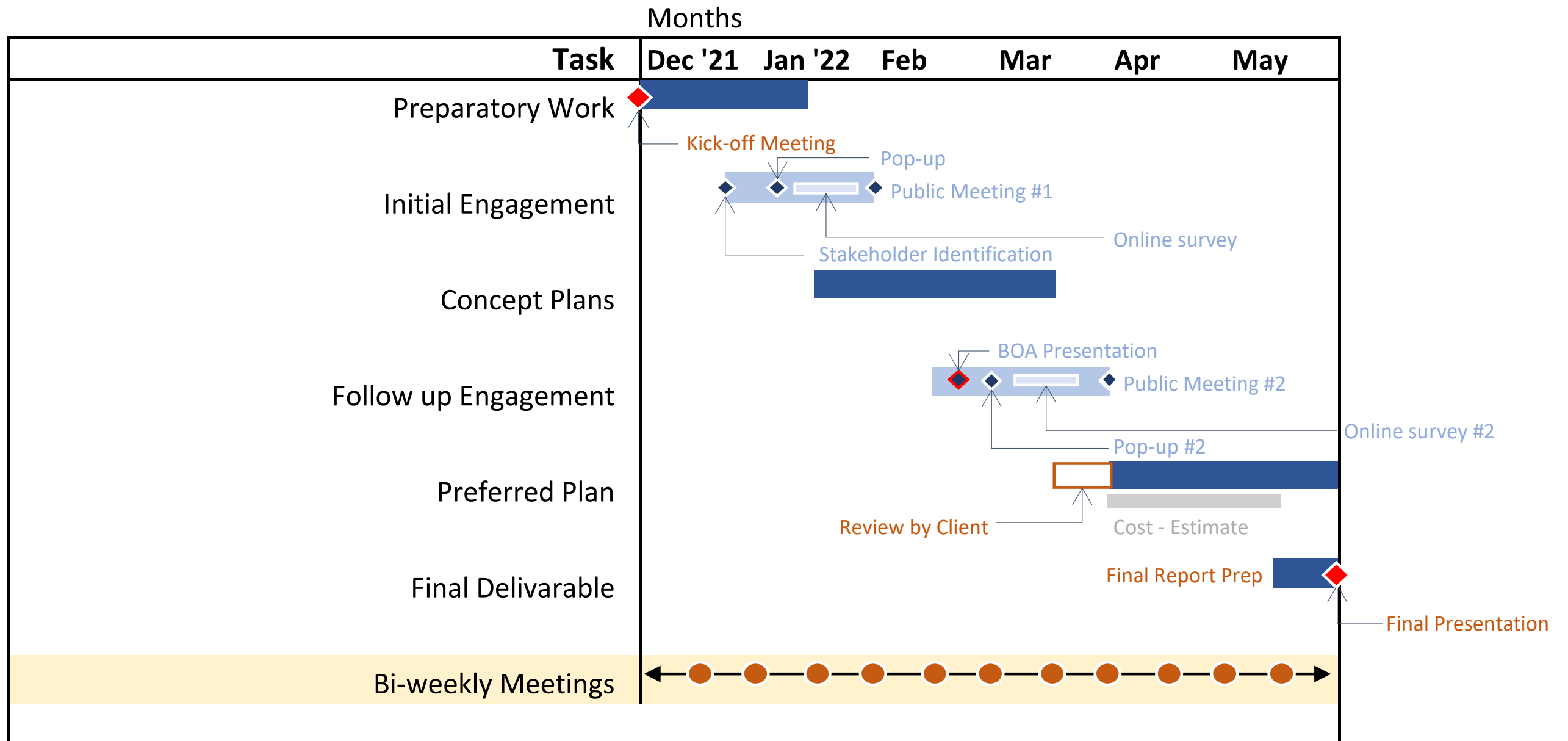
Professional Consultant warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Professional Consultant to any officer or employee of the City of Nashua with a view toward securing a contract or securing favorable treatment with respect to the awarding 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 Consultant, 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 Consultant.
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 Consultant. 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.

Schedule



Task Plan

Task	MTG	Marvel	F&T	BJH	Havey	Total	Approx. Hours		
							Marvel	Total	
1 Preparatory Work									
Kick-off meeting	■								
Existing Documents Collection & Review		■		■	■				
Review Previous Infrastructure Assessments		■	■	■	■				
Comparable Projects		■	■	■	■				
Progress Meeting	■								
Site Visit + Meeting		■	■	■					
Market Analysis/Benchmarking/Funding Sources				■	■				
Fee		\$5,000	\$4,000	\$5,000		\$14,000	50	140	
2 Intial Engagement									
Stakeholder Identification and Contact	■	■							
Process Overview Presentation-Zoom	■	■							
Online survey #1		■							
Pop-up	■	■							
Public Meeting #1	■	■							
Fee		\$10,000				\$10,000	90	90	
3 Concept Plans									
Program Options		■							
Option Selection	■	■							
Option Development		■							
Cost Estimate		■			■				
Fee		\$20,000	\$4,000		\$5,000	\$29,000	180	270	
4 Follow Up Engagement									
Process Overview Presentation-Zoom	■	■							
Online survey #2		■							
Pop-up	■	■							
Board of Alderman Presentation	■	■							
Public Meeting / Town Hall #2	■	■							
Fee		\$10,000				\$10,000	90	90	
5 Preferred Plan									
Develop Preferred Plan		■	■	■					
Cost Estimate		■			■				
Proforma and Memo				■	■				
Fee		\$20,000	\$4,000	\$10,000	\$10,000	\$44,000	180	390	
6 Final Deliverable									
Final Presentation	■								
Final Report		■							
Fee		\$5,000	\$3,075			\$8,075	50	70	
Total Fee			\$70,000	\$15,075	\$15,000	\$15,000	\$115,075		
Reimbursables			\$3,219	\$1,206		\$500	\$4,925		
							\$120,000		

Meetings
 In person ■
 Virtual ■

Responsibilities
 primary role ■
 supporting role ■



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

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

October 27, 2021
Memo #22-184

TO: Mayor Donchess
Finance Committee

SUBJECT: Architectural Design/Streetscaping of West Pearl Street in the amount not to exceed \$100,000 funded from accounts 53142 Consulting Services/Downtown Improvement Committee & Economic Development Escrow

Please see attached communications from Tim Cummings, Director of Economic Development, dated October 25, 2021 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Phase 1 & 2 of the Architectural Design/Streetscaping along West Pearl Street to include Preliminary Designs and Final Design work
Value: not to exceed \$100,000
Vendor: Icon Architecture
Department: 183 Economic Development
Source Fund: 53142 Consulting Services/ Downtown Improvement Committee & Economic Development Escrow Funds

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

We recommend this bid to be awarded to the lowest total cost vendor who meets the specified requirements. The Economic Development Division, and the Purchasing Department respectfully request your approval of this contract.

Regards,
Kelly Parkinson
Purchasing Manager

Cc: T Cummings
J Graziano



THE CITY OF NASHUA

Office of Economic Development

"The Gate City"

TO: James Donchess, Mayor
FROM: Tim Cummings, Economic Development Director
Date: October 25, 2021
RE: Approval of West Pearl Street Streetscaping Design Contract

I am writing to seek approval to enter into a design contract for streetscaping along West Pearl Street.

As you may know, the Performing Arts Center is currently under construction and originally the vision included some streetscaping and infrastructure upgrades along West Pearl Street, however, a decision was made early on to value engineer some of these external infrastructure improvements out of the project in an effort to contain the project cost.

This does not negate the need to improve West Pearl Street; to that end, the Downtown Improvement Committee has prioritized this project and has set aside \$50,000.00 to begin designing an improved West Pearl Street. This coupled with the previously escrowed figure of \$50,000 phases 1 and 2 can proceed. Phase 1 and 2 is essentially Preliminary Design and Final Design work. A third phase for construction administration would be necessary once the project goes under construction.

Under NRO 5-83, we will be utilizing the same design team currently under contract for the Performing Arts Center. They have a unique understanding of the area due to the considerable amount of time they have already spent on West Pearl Street and can act expeditiously to produce design plans.

THANK YOU.



CONTRACT FOR PROFESSIONAL SERVICES

TITLE

A CONTRACT BETWEEN

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

ICON ARCHITECTURE

NAME AND TITLE OF PROFESSIONAL CONSULTANT

101 SUMMER ST. BOSTON, MA 02110

ADDRESS OF PROFESSIONAL CONSULTANT

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

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

WHEREAS, Professional Consultant 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, Contract Time, Fee 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, Professional Consultant 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: SEE ATTACHED

3. PERIOD OF PERFORMANCE. Professional Consultant shall perform and complete all work by 2-28-22 _____ 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 Consultant shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

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

(\$100,000.00)

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

Unless Professional Consultant has received a written exemption from the City of Nashua, Professional Consultant 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 Consultants right to payment as the City of Nashua may reasonably require. Professional Consultant shall submit monthly requests for payment for services 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 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 Consultant 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 Consultant. The City of Nashua will pay Professional Consultant 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 executed 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:

James Donchess
229 Main St
Nashua, NH 03060

PROFESSIONAL CONSULTANT REPRESENTATIVE:

Ned Collier – ICON Architecture
101 Summer St
Boston, MA 02110

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 Consultant 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)

(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, "Professional Consultant", and its successors, transferees and assignees (together "Professional Consultant") includes any of the Professional Consultant's consultants, sub consultants, contractors, and subcontractors

2. **PROFESSIONAL CONSULTANT STATUS** The parties agree that Professional Consultant shall have the status of and shall perform all work under this contract as a Professional Consultant, 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 Consultant, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Consultant's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Consultant 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 Consultant 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 Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Consultant warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Consultant 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 Consultant 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 Consultant'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 Consultant shall not in any way relieve Professional Consultant 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 Consultant'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 Consultant shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Consultant 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 Consultant to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Consultant without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Consultant 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 Consultant, 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 Consultant's performance under the contract. Professional Consultant 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 Consultant should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Consultant'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 Consultant for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Consultant of the change.

When Professional Consultant seeks changes, Professional Consultant 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 Consultant should proceed with any or all of the proposed change.

Except as provided in this paragraph, Professional Consultant 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 Consultant in the performance of its work under this contract and that such personnel will be available to Professional Consultant 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

Consultant 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 Consultant also agree to attend all meetings called by the City of Nashua or Professional Consultant to discuss the work under the Contract, and that Professional Consultant 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 Consultant warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Professional Consultant. All future questions Professional Consultant 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 Consultant'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 Consultant prior to having received the City of Nashua's resolution shall be at Professional Consultant's risk and expense. At all times, Professional Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall receive all amounts due and not previously paid to Professional Consultant 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 Consultant in the event of a failure by Professional Consultant 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 Consultant shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Consultant may terminate the contract on 10 calendar days written notice if, through no fault of Professional Consultant, the City of Nashua fails to pay Professional Consultant 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 Consultant 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 Consultant shall receive all amounts due and not previously paid to Professional Consultant 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 Consultant's failure. Professional Consultant 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 Consultant until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Professional Consultant 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 Consultant 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 Consultant 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 Consultant such that Professional Consultant 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 Consultant shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Consultant 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 Consultant's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Consultant'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 Consultant Representative. At all times, Professional Consultant 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 Professional Consultant 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 Professional Consultant for damages because of hindrances or delays in the progress of the work from any cause, and Professional Consultant 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 Consultant 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 Consultant 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 Consultant are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Consultant under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Consultant. Professional Consultant shall require Subcontractors to carry appropriate and lawful amounts of insurance for the services they are providing. Professional Consultant will ensure compliance with this section and shall receive valid certificates of insurance from all Subcontractors as proof that coverage is in place..

Professional Consultant 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 Consultant 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 Consultant 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 Consultant of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Professional Consultant 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 Consultant 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 Consultant or anyone employed, directed, or supervised by Professional Consultant.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Professional Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant 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 Consultant. Professional Consultant shall have no claim of any sort to the unexpended funds.

14. **COMPENSATION** Review by the City of Nashua of Professional Consultant'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 Consultant to submit additional information. Unless the City of Nashua, in its sole discretion, decides otherwise, the City of Nashua shall pay Professional Consultant in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. **COMPLIANCE WITH APPLICABLE LAWS** Professional Consultant, 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 Consultant 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 Consultant agrees to the following terms. Professional Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant under this contract.

In connection with the performance of work under this contract, Professional Consultant 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 Consultant 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 Consultant shall constitute a material breach of the contract.

17. **ENDORSEMENT** Professional Consultant shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Consultant or under its direction as required under the laws of the State of New Hampshire.
18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Consultant 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 Consultant 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 Consultant 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 Consultant's expense, by Professional Consultant 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 Consultant, 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 Consultant in the performance of its obligations under this contract must be retained by Professional Consultant 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 Consultant shall promptly remit and deliver the materials, at Professional Consultant's expense, to the City of Nashua. Professional Consultant shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Consultant's obligations under this contract without the prior written consent of the City of Nashua.

21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Consultant expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Consultant (including those remitted to the City of Nashua by Professional Consultant 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 Consultant 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 Consultant. The City of Nashua shall have the right to reproduce any such materials.

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

Professional Consultant 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 Consultant 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 Consultant in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Consultant with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant. If any such interest comes to the attention of Professional Consultant at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Professional Consultant 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 Consultant 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 Consultant (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 Consultant shall refund to the City of Nashua any profits realized under this contract, and Professional Consultant 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 Consultant warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Professional Consultant 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 Consultant, 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 Consultant.
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 Consultant. 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.

Exhibit B



101 SUMMER ST
BOSTON MA
02110

ICONARCH.COM
617.451.3333

Tim Cummings
Director of Economic Development
City of Nashua
229 Main Street
Nashua, NH 03061-2019

October 26, 2021

Dear Tim,

Please find attached our landscape architecture and civil engineering proposals for redesigning West Pearl Street from Main Street to Walnut Street. Our proposed fee includes ICON’s design and construction documents oversight and participation in up to five public meetings. The fee of \$100,000 is structured in two phases. Construction Administration will be a third phase and is not included in this proposal.

PHASE 1: Preliminary Design	
ICON Architecture	\$6,000
Gregory Lombardi Design - Streetscape	\$20,400
Rist Frost Shumway - Civil Engineering + Overhead Utility Relocation	\$23,600
Total	\$50,000

PHASE 2: Design Documents	
ICON Architecture	\$6,000
Gregory Lombardi Design - Streetscape	\$28,000
Rist Frost Shumway - Civil Engineering + Overhead Utility Relocation	\$16,000
Total	\$50,000

The Architect shall be compensated pursuant to a "Lump Sum" amount agreed to by the Architect and the Owner. From the Notice to Proceed, the fee will be invoiced monthly on a percent complete basis. Meetings and/or site visits beyond those identified in this proposal will be an Additional Service based on the hourly rates attached hereto. Expenses (printing, parking & travel) are reimbursable at a rate of 1.1 times the actual cost.

Please let me know if this is acceptable. We anticipate that construction documents completed by mid-December.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ned A. Collier', with a long horizontal flourish extending to the right.

Ned A. Collier AIA, LEED AP
Principal | Vice President

Copy: Janice Marinello, Mark McKevez





BILLING RATES

Hourly billing rates are effective January 1, 2021 and subject to change annually. The hourly fee schedule for professional services performed on a *Time and Expense* basis is as follows:

Billing Rates

	<u>2021</u>
Principal III	\$335.00
Principal II	\$250.00
Associate Principal II	\$205.00
Associate Principal I	\$185.00
Senior Project Manager II	\$170.00
Senior Project Manager I	\$160.00
Project Manager	\$150.00
Licensed Professional III	\$140.00
Licensed Professional II	\$120.00
Licensed Professional I	\$110.00
Professional III	\$135.00
Professional II	\$115.00
Professional I	\$100.00
Technical/Drafter	\$ 90.00
Admin	\$ 75.00
Intern	\$ 65.00

Expenses

Expenses including reproduction, postage and delivery, telephone, model supplies and travel are billed at our cost plus 10 percent.



City of Nashua

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

(603) 589-3330
Fax (603) 594-3233
purchasing@nashuanh.gov

To: Mayor Donchess
Finance Committee

From: Kelly Parkinson, Purchasing Manager

Date: October 27, 2021

Re: Change Order for Nashua Conservation Commission Technical Assistance Contract

In accordance with O-14-011, communication of amendments to contracts, this memo is to inform the Finance Committee of a subsequent change order to the request from the Community Development Division for a project change order from Nashua Regional Planning Commission (NRPC) of Nashua NH.

The original contract price in the amount of \$10,000 was approved by the Board of Aldermen on December 8, 2020 (R-20-095).

The Community Development Division has requested a change to the contract term to extend from December 31, 2021 to June 30, 2022. There is no request for additional funding at this time.



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
Fax 589-3119
Web www.nashuanh.gov

STAFF MEMORANDUM

DATE: October 20th, 2021

TO: Mayor Jim Donchess
Finance Committee

FROM: Matt Sullivan, Planning Department Manager

RE: Nashua Regional Planning Commission (NRPC) Conservation Commission Technical Assistance Contract Extension Request

This Finance Committee request is to extend the current term of the Nashua Regional Planning Commission (NRPC) – Nashua Conservation Commission Technical Assistance contract. It will extend the current January 28th, 2021 contract until June 30th, 2022, while maintaining the current not-to-exceed amount of \$10,000 as defined within Section 4 of the existing agreement.

The Amendment is proposed in order to allow for adequate time to prepare an update to the City's 2006 Natural Resources Inventory (NRI). Further information related to the project is attached. NRPC anticipates that the scope of work will be completed within the remaining \$6,300 or 90 hours of work.

Please contact me should you have any questions.

Sincerely,

Matt Sullivan, Planning Department Manager

Cc:

Sarah Marchant, AICP, Community Development Division Director

Janet Graziano, Senior Finance Manager

File

MEMORANDUM

TO: NASHUA CONSERVATION COMMISSION
SHERRY DUTZY, CHAIRWOMEN

FROM: ANDREW SMETLZ, NASHUA REGIONAL PLANNING COMMISSION

SUBJECT: WETLAND BUFFER MAPPING PROJECT OUTLINE

DATE: SEPTEMBER 22, 2021

CC: JAY MINKARAH, EXECUTIVE DIRECTOR, NASHUA REGIONAL
PLANNING COMMISSION
MATTHEW SULLIVAN, PLANNING DEPARTMENT MANAGER, CITY OF
NASHUA

This memo contains a project outline for updates that Nashua Regional Planning Commission (NRPC) will perform to the *City of Nashua Natural Resource Inventory and Conservation Plan* (2006) by Moosewood Ecological Services, LLC. NRPC will perform these updates on behalf of the Nashua Conservation Commission (NCC) under an existing technical services contract signed January 2021. NRPC anticipates that this project will be completed no later than June 30, 2022, at a cost of \$6,300 for 90 hours of work.

The *City of Nashua Natural Resource Inventory and Conservation Plan* (referred to herein as the NRI) is a foundational document to the work of the Nashua Conservation Commission. The updated NRI will contain narrative text, graphics, and data from the latest, authoritative sources comprehensively describing Nashua's natural resources. This document will also contain recommendations for natural resource management. The NRI update will be completed in six phases outlined below. Specific work tasks associated with each project phase are described in detail below and in the "Project Timeline" section.

Phase 1: Map Update

NRPC will update all maps within the document (18) with the most recent, authoritative GIS data sources. GIS data sources will include: USGS, US F&WS, NRCS, NH F&G, NLCD, and others. This task will be completed no later than December 31, 2021.

Phase 2: First Draft

NRPC will complete a first draft of the report with updated data, maps, tables, and text. The updated document will follow the structure and convention of the existing report. Text within the document referencing data, maps, or tables will be brought up to date with the latest, authoritative data sources. NRPC will add new sections to the document to discuss outdoor recreation, the Lower Merrimack River Watershed Plan, and urban natural resources. These topics are not part of the 2006 NRI. These sections are described in detail in a memo sent to Commissioners, which also appeared in the Commission meeting from September 7, 2021. Additionally, NRPC will identify areas within the City, consisting of

parcels or groups of parcels, where forest management plans will be beneficial. This task will be completed no later than January 31, 2022.

Phase 3: Review First Draft

After the Commissioners have reviewed the first draft of the updated document. NRPC will reserve three hours to discuss the document with Commissioners and take their feedback. This review will include two hours to be set aside to attend the Commission meeting on February 1, 2022. An additional hour will be reserved to receive feedback from Commissioners by video conference, phone, or email. NRPC will accept feedback on the first draft through February 28, 2022.

Phase 4: Second Draft

After considering and incorporating all feedback provided by Commissioners, NRPC will revise the document and create a second draft. The second draft will have the look and feel of a final document, and it will be again submitted to the Commission for review. This task will occur no later than March 31, 2022.

Phase 5: Review Second Draft

After the Commissioners reviewed the second draft of the updated document. NRPC will reserve four hours to discuss the document with Commissioners and take their feedback. This review will include two hours to be set aside to attend the Commission meeting on April 5, 2022. Two additional hours will be reserved to receive feedback from Commissioners by video conference, phone, or email. NRPC will accept feedback on the second draft through April 31, 2022.

Phase 6: Final Report

After considering and incorporating all feedback provided by Commissioners, NRPC will revise the document and create a final, updated version of *The City of Nashua Natural Resource Inventory and Conservation Plan*. The final document will be submitted to the Commission no later than June 30, 2022.

Project Timeline:

	Task	Hours \$70/HR	Amount	Est. Completion
1	Map Update (18)	25	\$1,750	December 31, 2021
2	First Draft	20	\$1,400	January 31, 2022
3	Review First Draft	3	\$210	February 28, 2022
4	Second Draft	20	\$1,400	March 31, 2022
5	Review Second Draft	4	\$280	May 31, 2022
6	Final Draft	18	\$1,260	June 30, 2022

Deliverable:

NRPC will deliver to the NCC the following deliverables by June 30, 2022

- A PDF copy of the *City of Nashua Natural Resource Inventory and Conservation Plan (2022)* as updated by NRPC
- Printed, bound copies of the *City of Nashua Natural Resource Inventory and Conservation Plan (2022)* as updated by NRPC for each Commissioner and alternate (no additional charge for printing)

Assumptions:

Hourly project estimates include only time associated with project work. Hourly estimates do not include time in attendance at NCC meetings except for meetings where a review of the NRI will occur on February 1, 2022, and April 5, 2022. NRPC will discontinue regular attendance of NCC meetings.



RESOLUTION

AUTHORIZING THE EXPENDITURE OF UP TO TEN THOUSAND DOLLARS (\$10,000) FROM THE CONSERVATION FUND ON CONSULTING SERVICES WITH THE NASHUA REGIONAL PLANNING COMMISSION

CITY OF NASHUA

In the Year Two Thousand and Twenty

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to expend up to \$10,000 from the Nashua Conservation Fund (Fund #4080) on consulting services with the Nashua Regional Planning Commission to assist in completing stewardship plans and various other work in accordance with the Conservation Commission's duties per RSA 36-A.

PASSED BY THE BOARD OF ALDERMEN – DECEMBER 8, 2020

APPROVED BY THE MAYOR – DECEMBER 9, 2020

ATTEST: SUSAN K. LOVERING, CITY CLERK



CONTRACT FOR INDEPENDENT CONTRACTOR

NASHUA CONSERVATION COMMISSION TECHNICAL ASSISTANCE SERVICES

A CONTRACT BETWEEN

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

NASHUA REGIONAL PLANNING COMMISSION
and its successors, transferees and assignees (together "Independent Contractor")

NAME AND TITLE OF INDEPENDENT CONTRACTOR

30 TEMPLE STREET, SUITE 310, NASHUA, NH. 03060

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 following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A--General Conditions for Contracts

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

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

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, 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 herein:

- A. Technical Assistance services to the City of Nashua Conservation Commission pursuant to their duties and responsibilities as delineated within State of New Hampshire RSA 36-A, including, but not limited to:
1. Forest and Land Management Planning Support
 2. Trail Mapping and Wayfinding Efforts
 3. Development of Enhanced GIS Maps for Existing Conservation Lands/Resources
 4. Support of Easement Monitoring Efforts
 5. Other Technical Support as Required

3. PERIOD OF PERFORMANCE. Independent Contractor shall perform and complete all work within (12) twelve months from date of Notice to Proceed OR December 31st, 2021, whichever is sooner. The performance 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. The performance period may be extended by a maximum of (12) months from the end of the initial contract performance period. Independent Contractor shall begin performance upon receipt of an Executed Contract, a valid Purchase Order issued from the City of Nashua, and a Notice to Proceed.

4. COMPENSATION. Independent Contractor agrees to perform the work at the rate of \$70.00 per hour at a total cost not to exceed the contract amount of **TEN THOUSAND DOLLARS (\$ 10,000.00).**

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

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

- Electronically via email to 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 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:

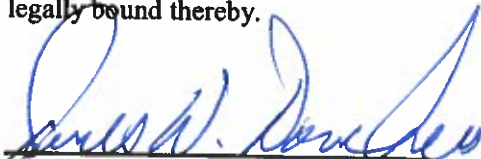
CITY OF NASHUA REPRESENTATIVE: INDEPENDENT CONTRACTOR REPRESENTATIVE:

Sarah Marchant
Community Development Director
City of Nashua
Community Development Division
229 Main Street – PO 2019
Nashua, NH 03061-2019

Jay Minkarah,
Executive Director
Nashua Regional Planning Commission
30 Temple Street
Suite 310
Nashua, NH 03060

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

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


City of Nashua, NH (signature)

James W Donchess, Mayor
(Printed Name and Title)

1/28/21
Date


Nashua Regional Planning Commission (signature)

Jay Minkarah, Executive Director
(Printed Name and Title)

January 25, 2021
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 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Independent Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Independent Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Independent Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Independent Contractor of the change.

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

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

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

in a timely manner. The City of Nashua and Independent Contractor also agree to attend all meetings called by the City of Nashua or Independent Contractor to discuss the work under the Contract, and that Independent Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

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

8. **TERMINATION OF CONTRACT**

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

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

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

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

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

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

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

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City of Nashua with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or 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 prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of Independent Contractor's failure. Independent Contractor shall not be relieved of liability to the City of Nashua for damages sustained from the failure, and the City of Nashua may withhold any payment to the Independent Contractor until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Independent Contractor must be submitted to the City of Nashua within 30 days of the effective date of the notice of termination.

If after termination for the failure of Independent Contractor to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that Independent Contractor had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City of Nashua shall,

if necessary, make an adjustment in the compensation paid to Independent Contractor such that Independent Contractor receives total compensation in the same amount as it would have received in the event of a termination-at-will.

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

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

9. **DISPUTE RESOLUTION** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and 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, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.
10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Independent Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Independent Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.
11. **INSURANCE** Independent Contractor shall carry and maintain in effect during the performance of services under this contract:
- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
 - \$1,000,000 Combined Single Limit Automobile Liability; *Coverage must include all owned, non-owned and hired vehicles; and
 - Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

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

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

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

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

to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

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

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

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

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

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

Without limitation of the foregoing, Independent Contractor's attention is directed to Title 41 "Public Contracts and Property Management" C.F.R. Subtitle B "Other Provisions

Relating to Public Contracts” Section 60 “Office of Federal Contract Compliance Programs, Equal Employment, Department of Labor” which, by this reference, is incorporated in this contract.

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

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

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

17. **ENDORSEMENT** Independent Contractor shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Independent Contractor or under its direction as required under the laws of the State of New Hampshire.
18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Independent Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
19. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Independent Contractor related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
20. **DISPOSITION OF CONTRACT MATERIALS** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or

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

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

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

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

Independent Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts,

products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

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

In the event Independent Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City of Nashua may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Independent Contractor shall refund to

the City of Nashua any profits realized under this contract, and Independent Contractor shall be liable to the City of Nashua for any costs incurred by the City of Nashua in completing the work described in this contract. At the discretion of the City of Nashua, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

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

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

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