
7:00 PM

Aldermanic Chamber

1. ROLL CALL
2. PUBLIC COMMENT
3. COMMUNICATIONS

From: Amy Girard, Purchasing Manager
Re: HVAC Annual Preventive Maintenance in the amount not to exceed \$25,710 funded from General Fund/ 54- Property Services

From: Amy Girard, Purchasing Manager
Re: Holiday Lighting for downtown Nashua in the amount not to exceed \$26,100 funded from Downtown Improvements ETF/ 68- Other Expenses

From: Amy Girard, Purchasing Manager
Re: Sewer Flow Metering and Capacity Analysis in the amount not to exceed \$34,880.09 funding will be through a contribution financed by the casino project applicant

From: Amy Girard, Purchasing Manager
Re: Transit operations services in the amount not to exceed \$9,789,870 funded from Transit Service Operations/ 55- Other Services

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



City of Nashua

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

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

September 9, 2026
Memo #27-148

TO: Mayor Donchess
Finance Committee

SUBJECT: HVAC Annual Preventive Maintenance in the amount not to exceed \$25,710 funded from
General Fund/ 54- Property Services

Please see attached communications from Adam Pouliot, Assistant Fire Chief, dated September 3, 2026, for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Annual agreement for inspection and preventative maintenance for the HVAC systems for all of the fire stations
Value: \$25,710
Department: 152 Fire Rescue
Vendor: Palmer & Sicard, Inc.
Fund: General Fund/54- Property Services

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

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

Regards,

Amy Girard
Purchasing Manager

Cc: A Pouliot
K Conde
T Cummings



Nashua Fire Rescue
Administrative Offices
177 Lake Street, Nashua, NH 03060
www.nashuafire.com

Adam Pouliot
Assistant Fire Chief
Professional Standards
(603) 589-3475
PouliotA@NashuaNH.gov

To: Chief of Department Steve Buxton
From: Assistant Fire Chief Adam Pouliot
Date: September 3, 2026
RE: 1-year service agreement for HVAC systems

Chief Buxton,

I am requesting permission to move forward with a 1-year service agreement with Palmer & Sicard Inc. for service and preventative maintenance on HVAC systems at all of our facilities. The fee for this agreement is \$25,710. This is an increase of \$510 from last year. This agreement includes the following:

- 4 yearly visits consisting of 2 full inspections (1 Spring, 1 Fall).
- 2 additional filter changes between inspections.
- 1 belt replacement in the fall.
- 1 coil/ condenser cleaning in the spring.
- Filters, belts and general lubrication items are included in this agreement.

Palmer & Sicard has been maintaining our equipment for several years now and we have built a good working relationship. This agreement also sets an hourly labor rate for us which is below industry standards.

If you have any questions or concerns regarding this purchase please feel free to contact me.

Respectfully Submitted,

Adam Pouliot
Assistant Fire Chief



HVAC Preventative Maintenance Proposal

89 Holland Way
Exeter, New Hampshire 03833
Office: (603) 929-0910
Fax: (603) 929-0973

<u>Proposal Submitted to:</u> Nashua Fire Rescue	<u>Phone:</u> 603-589-3475	<u>Date:</u> September 2, 2026
<u>Street:</u> 70 E Hollis Street	<u>Job Location:</u> Station 1-6 and Alarm Station	
<u>City, State and Zip Code:</u> Nashua, NH 03060	<u>Contact:</u> Adam Pouliot adamp@nashuanh.gov	

We propose hereby to furnish material and labor – complete in accordance with specifications below, for the sum of:
Twenty-Five Thousand Seven Hundred Ten and 00/100 (\$25,710.00)

Payment to be made as follows:

Quarterly payment of (\$6,427.50.00) in advance

Contract valid October 1, 2026, through September 30, 2027.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the specifications below involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tomado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation insurance.	<u>Authorized Signature:</u> Marc Dion, Service Department Manager Note: This proposal may be withdrawn by us if not accepted within 30 days.
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We hereby submit specifications and estimate for: **Standard Service Agreement**

Equipment included:

See Equipment List

Agreement includes – 4 yearly visits consisting of 2 full inspections, 1 in the Spring and 1 in the Fall. Also 2 additional filter changes will be completed between each inspection. 1 belt replacement(s) in the Fall and 1 coil cleaning(s) in the Spring.

Filters, belts, and general lubrication parts are included in this contract. Service Agreement customers always receive our preferred discount on parts.

We will inspect all parts of equipment necessary for proper operation of equipment in season. We will supply copies of work orders if an email has been sent.

We will perform emergency services, between inspections, at the following rates:

Regular hours: Preferred Rate \$110 After hours: Off-hours Rate \$165 Sunday / Holidays: Off-hours Rate \$220

Service calls for non-HVAC related issues, or service issues due to negligence or non-maintenance, will be billed at normal rates. This contract is subject to price revision and/or cancellation upon written notice by you or us 30 days prior to the anniversary date.

Exclusions: Any damage done by fire, floods, Acts of God, improper use of equipment, or unauthorized work done by other vendors. Changes to the system are made by Government regulations, codes, or insurance requirements. Parts of equipment are subject to be worn beyond our control: Structural supports, sheet metal, ductwork, coils, cabinets, etc. High voltage wiring, disconnects, and circuit breakers.

Palmer and Sicard invoices are payable upon receipt.

*The prices quoted in this proposal shall be firm for a period of ten (10) business days from the date of this quotation and subject to increases without notice due to pending tariff issues and/or price escalations.

**If, during the term of this contract, the price of various materials and/or equipment are increased due to any unforeseen tariffs or price escalations by the supplier whose price for the subject materials Palmer and Sicard, Inc. relied on in its proposal for the project, then Palmer and Sicard, Inc. shall be entitled to a Compensable Material Cost Increase and an increase in the Contract Sum or apply a surcharge to the customer accordingly.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: _____ Authorized Signature: _____

SERVICE AGREEMENT PROGRAM

These services are performed during a typical inspection and preventative maintenance agreement visit.

Air Conditioning Equipment (Spring and Fall)

- Inspect and adjust belts as needed.
- Change disposable pleated air filters.
- Inspect and clean economizer filters as needed.
- Visually inspect heat exchangers.
- Check and record refrigerant pressures.
- Check and record all amps and voltages.
- Visually inspect equipment for signs of refrigerant leaks.
- Check indoor evaporator coil. Clean as needed.
- Change batteries in thermostat as needed.
- Lubricate fan bearings, motors and pumps.
- Test condensate pumps.
- Replace belts once a year.
- Clean outdoor condenser coil.
- Inspect and clean drain pan and drain line.
- Check electrical components.
- Test safety controls.
- Check operation and submit report.

Oil & Gas Heating (Fall)

- Inspect and adjust belts as needed.
- Visually inspect equipment.
- Change batteries in thermostat as needed.
- Remove and replace nozzle and oil filter.
- Check gas valve pressure.
- Check cad cell or flame sensor.
- Inspect hot surface ignitor/electrodes.
- Check and adjust oil pump pressure and replace strainer.
- Check gas pressures and adjust as needed.
- Lubricate fan and motors bearings as needed.
- Perform efficiency test and submit report.
- Test all safety devices.
- Check combustion blower.
- Adjust flame as needed.
- Clean high-efficiency collection box and drain lines.
- Inspect venting.
- Check electrical components.



City of Nashua

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

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

September 9, 2026
Memo #27-149

TO: Mayor Donchess
Finance Committee

SUBJECT: Holiday Lighting for downtown Nashua in the amount not to exceed \$26,100 funded from Downtown Improvements ETF/ 68- Other Expenses

Please see attached communications from Liz Hannum, Economic Development Director, dated July 15, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Installation of holiday lighting in downtown Nashua
Value: \$26,100
Department: 183 Economic Development
Vendor: New England Holiday Light Company
Fund: Downtown Improvements ETF/ 68- Other Expenses

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

A solicitation for this project was issued on [Click here to enter a date.](#) and the following proposals/bids were received:

Vendor	Location
Lights Up Seasonal Lighting	Goffstown, NH
Just Lights	Nashua, NH

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

Regards,

Amy Girard
Purchasing Manager

Cc: L Hannum
D Enwright
T Cummings



To: Finance Committee
From: Liz Hannum, Economic Development Director on behalf of the Downtown Improvement Committee
Date: July 15, 2026
Subject: Downtown Holiday Lighting Contract

The Downtown Improvement Committee respectfully requests approval of the attached \$26,100 contract for the installation of holiday lighting in Downtown Nashua by New England Lighting paid for by the Downtown Improvement Committee Trust Fund.

The City's previous holiday lighting vendor no longer provides municipal lighting installation services. In response, the City requested quotes from several qualified lighting companies last year and identified a new vendor to continue the downtown holiday lighting program.

For the upcoming holiday season, the Downtown Improvement Committee requested that the existing lighting program be expanded to include additional lighting at strategic locations throughout downtown. These additions are intended to create a more cohesive and welcoming holiday environment, improve the appearance of key downtown gateways and gathering areas, and extend the impact of the lighting beyond the locations included in prior years. The expanded scope increased the total contract amount to \$26,100, placing it above the \$25,000 threshold and requiring Finance Committee approval.

The Downtown Improvement Committee's mission is to support the year-round beautification and enhancement of Downtown Nashua. Holiday lighting is a visible component of that work and helps create an attractive downtown environment for residents, visitors, businesses, and community events during the winter season.

No General Fund appropriation or transfer is required for this contract. Sufficient funding is available within the Downtown Improvement Committee's budget.

The Downtown Improvement Committee respectfully recommends approval of the attached \$26,100 downtown holiday lighting contract.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Hannum", with a stylized flourish at the end.

Liz Hannum
Economic Development Director

TF 83.7082, 68350



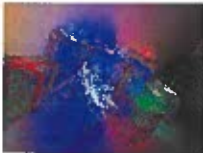
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From
**The New England Holiday Light
Company**

276 NH - 101
Unit B
Bedford, NH 03110

To
**City of
Nashua**
Liz Hannum
Nashua

Quote 7692817
Issued June 29, 2026
Valid Until July 20, 2026

ITEM	QUANTITY	PRICE	TOTAL
 Fixed Costs Includes all travel materials and accessories to complete your project 50% of project total is due in order to reserve lighting, The remaining balance is due two weeks prior to installation Customer is responsible to ensure power is available and working for lights. Quotes are valid for 30 days, at which time pricing is subject to change	1	\$250.00	\$250.00

Select One

Please select one of the following options:

PRICE

- ☒ **Main Street Tree's - Warm White** **\$25,850.00**
 A total of 21 tree's along Main St. spiral wrapped using green wire warm white mini lights. Each tree will get it's prominent branches wrapped to working ladder height.
 In 2025 several tree's where basket wrapped, these will be converted to spiral wraps. Includes purchasing price for all required lighting materials.

Subtotal: \$26,100.00
Tax: \$0.00
Total: \$26,100.00

Payment Terms 50.00% on receipt. Remainder on Oct 31st, 2026.

50% of project total is due in order to reserve lighting. The remaining balance is due after pre-installation.



The New England Holiday Light Company Holiday Lighting Agreement

**Please note that lighting cannot be installed without a signed agreement on file. Please e-sign at the bottom of this agreement.*

Client: Liz Hannum

Project: 2026 City of Nashua Permanent Tree Lighting

Agreement/Jurisdiction:

The person(s) whose signature(s) appear on this contract, known as the "Client", agree that The New England Holiday Light Company, also known as "NEHLC", shall provide services to install event lighting to the best of their abilities, in the manner described in this document. This is a binding contract, which incorporates the entire understanding of the parties, and any modifications must be agreed to in writing.

Scope of Work:

NEHLC is leasing the lights to the customer for the holiday season which is defined as an approximate 90 day period. NEHLC will provide installation (labor and materials), maintenance through the season, removal and storage of the lights. The lights will be removed in January, or at the earliest convenience of NEHLC, unless a prior agreement has been reached and included on the project invoice. Any questions regarding the quality of workmanship must be raised by the client within 48 hours of service.

Takedown of the lights is included in your holiday lighting services. . No appointment is necessary for takedown. This service will occur between January 2nd and Feb 15th, weather permitting. A \$50 booking fee will be charged if you need a faster takedown date or a scheduled time.

Retainer and Payment:

This contract between NEHLC and Client shall not become effective until it is signed and the initial amount due (at minimum 50% of project total) has been paid. At the time the contract takes effect, NEHLC shall reserve the time for lighting installation. For this reason, in the event that the client cancels the contract for any reason, all monies paid shall be retained by NEHLC in order to offset its loss of business. The total fee shall be paid within 48 hours of completed installation unless otherwise noted on the project invoice. In the event the Client fails to remit payment as specified, NEHLC shall have the right to immediately terminate this Agreement with no further obligation, retain any monies

already paid, and remove any lighting that has already been installed. Returned checks will be assessed a \$50 non-sufficient funds fee, and all future purchases/payments must be paid by Cashier's Check. Unless the contract is canceled, the initial payment shall be applied to the fee total. All checks should be made payable to The New England Holiday Light Company, 276 Route 101, Unit B, Bedford, NH, 03110.

Billing:

All billing is done electronically, and methods of payment accepted are credit card, debit card, cash or check. The New England Holiday Light Company requires a reservation fee of 50% of the Project Estimate to be paid up front prior to installation as well as a signed lighting agreement. The remainder of the balance and any adjustment required by the company to the final invoice will be paid in full at the time of installation, and no later than 48 hours after the installation was completed. All discounts are null and void if full payment is not received within 30 days of installation. The company will provide an estimate for the total cost of the work; however, the final invoice will account for and be adjusted for any additional cost installation or reduced for any overestimation in our quote not to exceed 150% of the Project Estimate without the client's approval. In the event payment is not made within the terms of the invoice, a FINANCE CHARGE of 18% per annum, but in no event in excess of the maximum amount allowed by law, shall be assessed. In the event the client fails to make payments as required, the account shall be considered to be in default and the client shall be responsible for costs of collection and reasonable attorney fees, as allowed by law. * Payment will be accepted by credit card, check, or cash.

Installation and Removal:

Installation and removal dates will be based on the companies' availability. NEHLC retains sole discretion as to the timing of services and no breach of contract occurs based on dates of services. You will be added to our installation schedule after your 50% deposit is paid and the lighting agreement is signed. We will install as soon as our schedule allows and remove your holiday lighting as weather permits. We will not remove lighting if there is any amount of snow or ice on the ground or trees as this can cause damage to the lighting material, trees, shrubs etc. and is generally unsafe for our employees. When the client no longer wants their lights to be on, it is the clients' responsibility to unplug or disconnect the power.

Photo Release:

Your signature on this document constitutes your consent and authorization for The New England Holiday Light Co. to take and use photos of our work on your home and property for advertising, trade or commerce, including but not limited to, display on our website, marketing materials, social media, printed materials, etc. You agree that you are not entitled to any financial compensation for such use and that you have no rights of ownership in such photos. Photos that you may post on social media that contain lighting work from NEHLC are also subject to this photo release. Further, we reserve the right on commercial accounts to state the property name and/or address.

Limitation of Liability and Remedies/Responsibilities:

The client is responsible for maintaining adequate, functional, and proper electrical outlets and power supply for the lighting project. It is not the responsibility of NEHLC to ensure all electrical components are working properly and are prepared for lighting installation.

NEHLC has no control over harsh weather conditions, moisture, rodents, inadequate power to outlets, weak trees/branches, structural integrity of venues, buildings and other factors which can affect your lighting project. NEHLC may need to use elements of the property including trees, bushes, structures, buildings, homes, landscaping, to complete your lighting project. The Company is not responsible for any damages or costs associated with these elements at either the time of installation or removal. NEHLC is in no way responsible for any injury or death associated with the misuse of, tampering with, malfunction or natural causes affecting the lighting equipment

provided by NEHLC by the Client. Within reason, and at our discretion, we may be called to fix lighting that has become disconnected or needs a "touch-up". A service fee may be billed for such a call at our discretion and agreed upon by the client. Ownership of materials used for the lighting project will be maintained by NEHLC.

Unless agreed upon in advance, NEHLC shall be the exclusive lighting contractor retained for holiday lighting. If NEHLC is not the exclusive lighting contractor we can not guarantee our lighting will match the hue or brightness of any other lighting. Client is responsible for using lighting as intended and is responsible for any damages to lighting, this includes damages to material by guests. If any NEHLC material or supplies are damaged, it is the client's responsibility to replace affected materials within 30 days of notice from NEHLC. The Company will invoice the client for damaged material and may charge up to 200 % of the materials original value which may include vendor shipping fees, and loss of business while the materials are being replaced.

If NEHLC is unable to perform any or all of the duties herein for any reason, including but not limited to, fire, transportation problems, acts of God, accident, illness, technical problems, or supply and manufacturer issues and delays, all monies received by The Company will be returned to Client, processed by NEHLC within 10 business days (NEHLC does not have control over credit card company processing timelines) and NEHLC shall have no further liability with respect to this Agreement. The sole remedy for any actions or claims shall be limited to a refund whose total amount cannot exceed the total monies paid by Client under this Agreement during the time preceding the date on which such liability arises. NEHLC is not responsible for damages to trees, bushes, branches, clients' homes, grounds, property at either the time of installation or removal, landscaping or yards that may be soaked due to rain or other elements, or inadequate power supplies that could cause damage to the home, outlets or property. The client is not to attempt to fix, adjust, repair or modify any lighting that has been installed by NEHLC. NEHLC is not liable for manufacturer defects in material that may cause damages, fire, death or damages that arise from the lighting material being affected by the weather or elements. Client is also aware that ground cords, extension cords etc will be in use to connect lighting on their property. NEHLC is not liable for injuries resulting from clients not paying attention and falling or hurting themselves from tripping. Client should also be aware of ground cords regarding snow removal with snow throwers as significant damage or body harm is possible and NEHLC is not liable for client negligence surrounding ground cords.

Both Parties to this contract agree that in the event of the failure or malfunction of the lighting and/or decorations provided, the sole and exclusive remedy available to the client shall be the refund of the cost of the services provided under this agreement, processed by NEHLC within 10 business days (NEHLC does not have control over credit card company processing timelines) or the repair or replacement of the lighting and/or decorations, to be determined solely at the discretion of NEHLC. Both parties agree that NEHLC will not be liable for any consequential damages of any nature caused to the property of the client by any failure or malfunction of the lighting and decorations provided under this agreement. SOME STATES MAY NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATIONS AND EXCLUSION MAY NOT APPLY TO YOU. BOTH PARTIES AGREE THAT ANY CLAIM BY THE CLIENT THAT THE WORKMANSHIP OR MATERIALS USED ARE DEFECTIVE OR NONCONFORMING MUST BE BROUGHT TO THE ATTENTION OF NEHLC IN WRITING PRIOR TO YOUR EVENT AND FAILURE TO DO SO RESULTS IN A COMPLETE AND FINAL WAIVER OF ALL CLAIMS. Any questions regarding the quality of workmanship must be raised by the client prior to the Clients event and within enough time for NEHLC to rectify the issue. If a problem with lighting arises after the installation, the client agrees to immediately contact NEHLC at 603-836-4432.

Fire, Theft and Vandalism Clause

Client will be liable for all loss or damage to the equipment and expense of NEHLC resulting from the gross negligence or willful misconduct of client, which includes, but is not limited to the use or operation of materials in a reckless or abusive manner or intentional damage to the equipment by the client or with the clients permission, or under any of the following circumstances:

(A) striking overhead objects with the materials;

(B) all loss and damage associated with vandalism, malicious mischief, theft or conversion of the materials not

documented by Clients prompt filing with the applicable public authorities (with an immediate written copy to NEHLC) of a formal written theft, vandalism or conversion report;

(C) a loss of, or damage to, the materials resulting from any exposure to radioactive, contaminated or other hazardous materials;

(D) use of or operation of the materials by a person other than an employee of the Client possessing all necessary permits and not otherwise prohibited by law from such operation;

(E) use or operations of the materials in violation of any law or ordinance;

(H) the failure of a Client to perform, or the improper performance of, the basic maintenance required under this Agreement;

(F) any failure of the Client to comply with any notice requirements of this Agreement;

(G) the failure of the client not reasonably restricting access to the materials resulting in loss, theft, or damage to materials.

In the event of any loss or damage to the materials owned by NEHLC, The Company will subrogate with respect to any rights of the client to recover against any person or entity. The client will execute and deliver whatever instruments are required and do whatever else is necessary to secure such rights. Client will cooperate fully with NEHLC and its insurers in the prosecution of those rights and will neither take, nor permit nor suffer any action to prejudice NEHLCs rights with respect thereto.

The Company is fully insured and can present a Certificate of Insurance if required.

Client agrees that the use of e-signature for service is binding



City of Nashua

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

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

September 9, 2026
Memo #27-150

TO: Mayor Donchess
Finance Committee

SUBJECT: Sewer Flow Metering and Capacity Analysis in the amount not to exceed \$34,880.09
funding will be through a contribution financed by the casino project applicant.

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

Item: Analysis of Tara Boulevard's sewer metering and capacity to understand the impact of the proposed casino to the South Merrimack Interceptor
Value: \$34,880.09
Department: 160 Admin/Engineering
Vendor: Hazen and Sawyer
Fund: Financed by the casino project applicant

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

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

Regards,

Amy Girard
Purchasing Manager

Cc: D Hudson
C O'Connor
T Cummings

City of Nashua, Public Works Division

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

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

Re: Sewer Flow Metering and Capacity Analysis for Tara Boulevard Casino Project

G. Motion: To approve the award of a Sewer Flow Metering and Capacity Analysis contract for a Casino Project on Tara Boulevard to Hazen and Sawyer, P.C. of Manchester, NH in an amount of \$34,880.09. Funding will be through a contribution financed by the casino project applicant

Discussion: Sewer metering and capacity analysis is proposed to better understand existing sewer flows and capacity of the sanitary sewer system in the vicinity of Tara Boulevard and points downstream to evaluate potential impacts of a proposed casino project.

Hazen will expand the City's existing InfoWorks model to include local sewers that convey flow from the proposed casino to the South Merrimack Interceptor. Using collected flow data, Hazen will update the model calibration to accurately represent dry and wet weather flows (based on observations during the temporary monitoring period) in the impacted portion of the South Merrimack Interceptor and local sewer. Using the recalibrated model, Hazen will conduct model simulations to determine if the existing local sewer and South Merrimack Interceptor have adequate capacity to convey additional flows from the casino during dry and wet weather conditions.



City of Nashua

Community Development Division

City Hall, 229 Main Street, PO Box 2019

Nashua, New Hampshire 03061-2019

www.nashuanh.gov

Community Development	589-3095
Planning and Zoning	589-3090
Building Safety	589-3080
Code Enforcement	589-3100
Urban Programs	589-3085
Conservation Commission	589-3105
Transportation	880-0100
Sustainability	589-3092

PLANNING BOARD THIRD PARTY REVIEW SERVICES AGREEMENT

I. PARTIES

City of Nashua ("City"):

229 Main Street

Nashua, NH

Attn: Planning Manager

Applicant/Owner/Developer ("Applicant"):

Property ("Project"): The Property subject to review is located at:

11 Tara Boulevard

II. PROJECT NUMBER

A26-0012-S

III. GENERAL CONDITIONS

- A. The City of Nashua Planning Board (the "Board"), through the Planning Department and Engineering Department (the "Department"), may engage one or more third-party professionals to review Application(s) on its behalf and consult with Planning Board during its review of and decision on the Application(s).
- B. As authorized by New Hampshire law (RSA 676:4, I(g) and RSA 676:4-b), the Board will require the Applicant to pay all expenses reasonably incurred by the Board in obtaining any such third-party review and consultation as the Board deems reasonably necessary for this Application.
- C. The Applicant certifies that it shall pay the City of Nashua in full for any and all such third-party review expenses incurred by the Board with respect to the Application. The Applicant acknowledges that failure to pay such expenses, within thirty (30) days after written notice to the Applicant, shall constitute grounds for the Board to deny the Application without prejudice.
- D. The Board will notify the Applicant promptly of its chosen third-party consultant(s) and provide the Applicant with the consultant's scope of review and estimated cost of services through this Agreement.
- E. Within five (5) business days following notification, the Applicant may request that the Board or its administrative agent select an alternative third-party consultant from one chosen by the Board and this request may include the name of a preferred consultant. The Planning Board shall exercise reasonable discretion to determine whether the request is warranted. When such a request is granted by the Board, the 65-day period for the Board's action on the Application shall be extended 45 days to provide the Board adequate time to identify and engage a different consultant. (RSA 676:4-b, I)
- F. The City will require consultants to provide detailed invoices with reasonable task descriptions for services rendered with respect to the Application. Upon request of the Applicant, the Board will provide a reasonably detailed accounting of expenses, or corresponding escrow deductions, with copies of supporting documentation. Attorney-client privileged information on such documentation (if any) will be redacted.
- G. Review by any third-party review consultant will not begin until the Applicant has deposited, within a dedicated City account, funding equivalent to 100% of the estimated cost of such consultant services. The Applicant shall deposit such funds within ten (10) days after the

Board or the Department provides the Applicant with the Consultant's scope of review and estimated cost of services, or such other timeframe as the parties may determine in the event an alternative third-party consultant is retained. Any funds not expended by the Board for such services will be returned to the Applicant. To the extent the Applicant's delay in depositing such funds with the Planning Board impacts the 65-day period for the Board's action on the Application, the Applicant may waive such time period or the Board may deny the Application without prejudice.

- H. An additional deposit may be required from the Applicant upon reaching ninety percent (90%) of the consultant's estimate, based upon the consultant's estimate of the cost to complete the review and advise the Board.
- I. Additional expenses may be imposed for any or all of the following reasons: (a) the Applicant or the Board expands the scope of consultant services either by mutual agreement or if the Board determines it is necessary, (b) the Applicant substantially amends the Application, (c) additional meetings involving the consultant are requested (d) the consultant's appearance is requested at the Board beyond what was originally anticipated, (e) the consultant's attendance is required at one or more meetings with regional, state, or federal agencies which were not anticipated in the earlier scope of services, or (f) any other appropriate reason.
- J. If, upon completion of the consultant's work the funds on deposit are insufficient to fully satisfy consultant's charges, the Applicant will make payment of such insufficiency within thirty (30) days of being so notified, failing which the application will be denied without prejudice.
- K. If litigation is necessary to enforce the provisions of this Agreement upon a default by the Applicant, the Applicant will pay the City's reasonable attorney's fees, costs, and expenses incurred as a result thereof.
- L. The Applicant shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.
- M. In the event that any provision of this Agreement 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 Agreement shall not affect any other provision, the Agreement 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.
- N. No changes, amendments, or modifications of any terms or conditions of this Agreement shall be valid unless reduced to writing and signed by both parties.
- O. This Agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this Agreement, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court–Nashua and not elsewhere.

IV. SCOPE OF REVIEW

- A. Review Services: The scope of review services are as follows:

See attached Casino Development Flow Metering and Capacity Analysis scope from Hazen and Sawyer.

V. THIRD PARTY REVIEW CONSULTANT

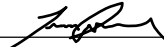
Hazen and Sawyer

VI. COST OF REVIEW

A. The estimated cost of review is \$34,880.09

VII. AUTHORIZATION

APPLICANT

Signature: 

Title: Senior Director, Design & Construction Gaming

Name: Tim Brown

Date: 08-01-2026

CITY OF NASHUA

Signature: 

Title: Mayor

Name: Jim Donchess

Date: 9/1/2026

FOR FINANCE OFFICE USE ONLY:

Please forward this document to FinancialReporting@nashuanh.gov for Activity setup.

Accounting Unit	Account	Activity	Account Category
BS8402	21730	A26-0012-S	21730

NOTE: The Planning Board project number will be used for the Activity



CONTRACT FOR PROFESSIONAL SERVICES

TARA BLVD DEVELOPMENT FLOW METERING AND CAPACITY ANALYSIS

A CONTRACT BETWEEN

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

HAZEN AND SAWYER
and its successors, transferees and assignees (together "Professional Engineer")

NAME AND TITLE OF PROFESSIONAL ENGINEER

1750 ELM STREET, SUITE 402, MANCHESTER, NH 03101

ADDRESS OF PROFESSIONAL ENGINEER

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

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

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

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

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

Exhibit A --General Conditions for Contracts;

Exhibit B --Hazen and Sawyer Scope of Services & Project Budget

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

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

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

DESCRIPTION OF WORK:

Provide engineering services for the Tara Blvd Casino Development Flow Metering and Capacity Analysis, including temporary sewer flow monitoring, updates and calibration of the City's hydraulic model, and analysis of available sewer capacity for flows associated with the proposed casino development. Prepare a technical memorandum documenting the analysis, model results, and capacity findings. as detailed in **Exhibit B**.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work by **January 29, 2026** which date shall only be altered by mutually approved written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

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

THIRTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY and 09/100 DOLLARS
(\$34,880.09)

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

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

➤ Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

➤ Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

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

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

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

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

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

CITY OF NASHUA REPRESENTATIVE:

Dan Hudson
City Engineer
Division of Public Works - Engineering
848 West Hollis Street
Nashua, NH 03062
hudsond@nashuanh.gov

PROFESSIONAL ENGINEER REPRESENTATIVE:

Nicholas J. Ellis, P.E.
Associate Vice President
Hazen and Sawyer
1750 Elm Street, Suite 402
Manchester, NH 03101
nellis@hazenandsawyer.com

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

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

City of Nashua, NH (signature)

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

Date



Hazen and Sawyer (signature)

Nicholas Ellis, PE, Associate Vice President
(Printed Name and Title)

8/4/2026
Date

EXHIBIT A
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CITY OF NASHUA
GENERAL TERMS AND CONDITIONS

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General Terms and Conditions

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

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

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

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be

taken off of the project by Professional Engineer without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. **CITY OF NASHUA REPRESENTATIVE** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative. Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Professional Engineer may change the address or representative by giving written notice to the other party.
5. **CHANGES TO SCOPE OF WORK** The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Engineer of the change.

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

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

6. **CITY OF NASHUA COOPERATION** The City of Nashua agrees that its personnel will cooperate with Professional Engineer in the performance of its work under this contract and that such personnel will be available to Professional Engineer for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City of Nashua also agrees to provide Professional Engineer with access to City of Nashua records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City of Nashua and Professional Engineer also agree to attend all meetings called by the City of Nashua or Professional Engineer to discuss the work under the Contract, and that Professional Engineer may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

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

8. **TERMINATION OF CONTRACT**

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

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

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

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

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

B. TERMINATION FOR CAUSE This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to Professional Engineer in the event of a failure by Professional Engineer to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner. Professional Engineer shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Engineer may terminate the contract on 10 calendar days written notice if, through

no fault of Professional Engineer, the City of Nashua fails to pay Professional Engineer for 45 days after the date of approval by the City of Nashua of any Application for Payment.

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

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

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

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

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

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

9. **DISPUTE RESOLUTION** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.
10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Professional Engineer for damages because of hindrances or delays in the progress of the work from any cause, and Professional Engineer agrees to accept in full satisfaction of such hindrances and delays any extension of time to perform services that the City of Nashua may provide.
11. **INSURANCE** Professional Engineer shall carry and maintain in effect during the performance of services under this contract:
- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
 - \$1,000,000 Combined Single Limit Automobile Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
 - \$1,000,000 Profession Liability;
 - and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

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

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

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.

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

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

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

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

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

15. **COMPLIANCE WITH APPLICABLE LAWS** Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements,

all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

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

Without limitation of the foregoing, Professional Engineer's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

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

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

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

17. **FEDERAL SUBCONTRACTING REQUIREMENTS** If Professional Engineer awards a subcontract under this contract, Professional Engineer, if applicable, shall use the following alternative steps:
- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
 - B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.
 - C. If applicable, Professional Engineer agrees to complete and submit to the City of Nashua a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization

Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. **ENDORSEMENT** Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.
19. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
20. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
21. **DISPOSITION OF CONTRACT MATERIALS** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua. **Professional Engineer may retain one copy of the information produced under this Agreement for archival purposes.**
22. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

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

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

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

23. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.
24. **TAXES** Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
25. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.
26. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

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

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

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

28. **THIRD PARTY INTERESTS AND LIABILITIES** The City of Nashua and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Engineer.
29. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.
30. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.
31. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any

terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

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

City of Nashua Casino Development Flow Metering and Capacity Analysis

Scope of Work

Task 1 – Project Management

General Project Management – Hazen will manage the subcontractors involved in the work to ensure the work is delivered on time and on budget. Hazen will provide monthly invoices with a progress report summarizing the work completed within the billing period. The work is expected to be completed within 4 months of the signed notice to proceed.

Meetings – Hazen will prepare for and attend monthly progress meetings to update the City on the ongoing work and upcoming work schedule, coordinate upcoming work, and answer questions and receive input from the city. Hazen will prepare a meeting agenda and minutes for each monthly meeting.

QA/QC – All deliverables will be reviewed internally prior to delivery to Nashua for review, comment and approval.

Deliverables: Monthly invoices and progress report, meeting agendas and minutes.

Task 2 – Temporary Flow Metering

Hazen will analyze the potential development for a casino in the vicinity of Tara Boulevard and propose locations for installation of two (2) temporary area-velocity (AV) flow meters and one (1) rain gauge for review by the City. Hazen will provide field oversight during flow meter installation, and work with the flow metering subcontractor to help ensure flow meters are installed in locations with suitable hydraulics for accurate flow measurement.

The four temporary flow meters and one rain gauge will be installed for a period of eight (8) weeks. During the temporary monitoring period, Hazen will analyze preliminary data on a weekly basis and notify the flow metering subcontractor if any potential problems with the data are identified.

Deliverables: Mapping depicting locations for installation of temporary flow meters and rain gauge.

Assumptions:

- Police details are not required for flow meter installation.

- City will provide Hazen with locations of proposed developments, and where connections to local sewers and the South Merrimack Interceptor are anticipated.

Task 3 – Model Updates and Analysis

Hazen will expand the City's existing InfoWorks model to include local sewers that convey flow from the proposed casino to the South Merrimack Interceptor. Using flow data collected as part of Task 2, Hazen will update the model calibration to accurately represent dry and wet weather flows (based on observations during the temporary monitoring period) in the impacted portion of the South Merrimack Interceptor and local sewer.

Using the recalibrated model, Hazen will conduct model simulations to determine if the existing local sewer and South Merrimack Interceptor have adequate capacity to convey additional flows from the casino during dry and wet weather conditions (including 1-, 2-, and 5-yr design storm events).

Deliverables: Updated model files

Assumptions:

- City will provide Hazen with sufficient GIS data and/or record drawings to accurately represent local sewers that convey flow from the proposed casino to the South Merrimack Interceptor.
- City will provide Hazen with flow projections for the proposed casino development, or, sufficient information about the proposed casino development that Hazen can develop flow projections based on industry standard guidance for commercial developments.

Task 4 – Technical Memorandum

Hazen will summarize the analyses conducted in Task 3 in a succinct Technical Memorandum (TM). The TM will include a brief description of flow monitoring program, observed wet weather events, model calibration activities/results, flow projections from the new developments, and summary of model predictions. Mapping and Hydraulic Grade Line (HGL) profiles depicting pipe capacities in relevant locations will be included.

Deliverables – Draft and Final Technical Memorandum

SUMMARY OF LABOR AND COSTS - DRAFT
CITY OF NASHUA, NH
CASINO DEVELOPMENT FLOW METERING AND CAPACITY ANALYSIS

HAZEN AND SAWYER TEAM BUDGET BY TASK

Task Description		Project Director	Project Manager	Sr. Associate	Principal Engineer	GIS Tech	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
		Rates	\$105.00	\$75.00	\$78.00	\$50.00	\$37.00		OH Rate: 178.0%			Profit: 10.0%	
1.0	Project Management, QA/QC, Meetings	2	10	0	2	0	14	\$1,060.00	\$1,886.80	\$2,946.80	\$0.00	\$294.68	\$3,241.48
2.0	Temporary Flow Metering	2	5	0	12	2	21	\$1,259.00	\$2,241.02	\$3,500.02	\$16,000.00	\$350.00	\$19,850.02
3.0	Model Updates and Analysis	2	2	12	8	0	24	\$1,696.00	\$3,018.88	\$4,714.88	\$0.00	\$471.49	\$5,186.37
4.0	Technical Memorandum	2	8	4	20	1	35	\$2,159.00	\$3,843.02	\$6,002.02	\$0.00	\$600.20	\$6,602.22
	Project Totals	8	25	16	42	3	94	\$6,174.00	\$10,989.72	\$17,163.72	\$16,000.00	\$1,716.37	\$34,880.09



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

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

September 10, 2026
Memo #27-151

TO: Mayor Donchess
Finance Committee

SUBJECT: Transit operations services in the amount not to exceed \$9,789,870 funded from Transit Service Operations/ 55- Other Services

Please see attached communications from Matt Sullivan, Community Development Director, dated September 10, 2026 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Transit operations to include Fixed Route Service and Paratransit Service
Value: \$9,789,870
Department: 186 Transportation
Vendor: Transdev, Inc.
Fund: Transit Service Operations/55- Other Services
Term: Expires June 30, 2029

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

A competitive proposal for this project was issued and the following proposals were received:

Vendor	Location
Transdev, Inc.	Lombard, IL
RTW Management	Salt Lake City, UT

Community Development Division: Transit Department, and the Purchasing Department respectfully requests your approval of this contract.

Regards,

Amy Girard
Purchasing Manager

Cc: M Sullivan
D Enwright
T Cummings

Jim Donchess

Mayor • City of Nashua

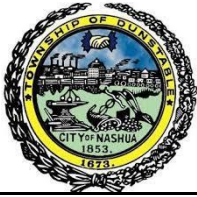
To: Board of Aldermen
From: Mayor Jim Donchess
Date: September 10, 2026
Re: Multi-Year Contract Award – Transdev, Inc.

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

The Finance Committee has approved and placed on file the notification of the award of the referenced contract at the September 16, 2026 meeting and as such I am requesting the full Board of Alderman approve the following contract:

Item: Contract for day-to day operations for fixed-route transit service and paratransit services
Value: \$9,789,870
Vendor: Transdev
Purchasing Memo#: 27-151 dated September 10, 2026
Contract Term: Expires June 30, 2029

Thank you.



City of Nashua

Community Development Division

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

Community Development	589-3095
Planning and Zoning	589-3090
Building Safety	589-3080
Code Enforcement	589-3100
Urban Programs	589-3085
Conservation Commission	589-3105
Transportation	880-0100
Sustainability	589-3092

Date: September 9th, 2026

**To: Jim Donchess, Mayor
Finance Committee
Board of Aldermen**

From: Matt Sullivan, Community Development Director

Re: TransDev, Inc. Transit Operation Service Contract 2.75 Year Contract with Up to 4 Extension Years

The Division of Community Development and Nashua Transit System (NTS) respectfully request approval of the following contract which represents a new contract with the City's current transportation service contractor, TransDev. In early 2026, the solicited proposals and ultimately reviewed two (2) qualified proposals. After substantial consideration and negotiation, NTS/City representatives selected TransDev as the preferred vendor.

The contract before the Committee/Board includes revised pricing as shown below, a set of supplementary conditions that provide guidance and compliance requirements for the contractor, and a provision outlining the process by which the City will work to move away from using the City's Insurance and towards the vendor's insurance coverage for vehicles, drivers, etc. The final terms of the insurance are in the process of being negotiated. However, within the Insurance section of the Supplementary Conditions, a process is laid out for how the City can ultimately opt into the vendor insurance, subject to said insurance meeting the Risk Management Department's requirements. This insurance would not be effective until July 1st, 2027 at the earliest.

The contract also includes the ability for the City to opt-in to two (2) separate two-year extensions. It should be noted that the "Variable Rate" defined below will now be billed to the City separately for CDL and non-CDL services.

This is a not-to-exceed contract, with the maximum billable variable, fixed, and insurance rates below. The specific variable and fixed rates are part of the contract documentation.

Final terms of the Supplementary Conditions and Standard Contract are in review by the Risk Management and Legal Department, but substantive edits are not anticipated. The materials presented to the Finance Committee are drafts, but substantially in the form of the final contract versions. Pricing is final.

	Variable Rate - CDL and Non- CDL	Fixed Rate	Insurance	Total
Year 1 (FY2027 10/1/26-6/30/27 or 0.75 Year)	\$1,614,007 (\$2,152,009 x 0.75 Year)	\$541,238 (\$721,651 x 0.75 Year)	\$0	\$2,155,245
Year 2 (FY2028)	\$2,277,168	\$751,367	\$376,972	\$3,405,507
Year 3 (FY2029)	\$2,339,973	\$777,646	\$393,084	\$3,510,703
Total Not to Exceed - Initial Contract Term	\$6,769,150	\$2,250,664	\$770,056	\$9,789,870

Year 4 (FY2023)	\$2,429,562	\$802,305	\$411,951	\$3,643,818
Year 5 (FY2031 - if extended)	\$2,529,392	\$830,503	\$431,738	\$3,791,633

We thank the Mayor, Finance Committee, and Board of Aldermen for your continued support and consideration of this new long-term contract for Nashua's Transit System riders, many of whom represent the community's most vulnerable populations and are fully transit-dependent.

I am available to provide a brief overview presentation of the request to the Finance Committee and Board of Aldermen as well as answer any questions that Aldermen may have in advance of those sessions.

Thank you for your consideration of this request.

Sincerely,



Matt Sullivan
Community Development Director

Cc: Amy Girard, Purchasing Manager
Camille Correa, Transit Administrator



CONTRACT FOR PROFESSIONAL SERVICES

TRANSIT CONTRACTING AGREEMENT

BETWEEN

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

AND

TRANSDEV, INC.

THIS AGREEMENT is made and entered into by and between the City of Nashua (CITY) and TransDev, Inc. (CONTRACTOR).

WHEREAS, the City, a political subdivision of the State of New Hampshire, requires the services of a Contractor ; and

WHEREAS, the CITY is desirous of obtaining a qualified transit contracting company for the operation of the City of Nashua Fixed Route & Paratransit Services, ("FRPS"); and

WHEREAS, the CONTRACTOR is desirous of providing such operational services;

WHEREAS, 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. Contractor Services:

The City does hereby engage and retain the CONTRACTOR to operate its Fixed Route & Paratransit Services, pursuant to this Agreement and per the conditions set forth herein.

2. Commencement and Term:

The Agreement shall become effective on October 1st, 2026 and shall remain in effect until June 30, 2029 with the option to extend for up to four (4) years at two (2) year intervals. An option to extend will be presumed exercised unless either party notifies the other in writing at least six (6) months prior to the end of the then current contract year (July 1 - June 30) of its intent not to extend.

3. **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 – City Request for Proposals
Exhibit C – Vendor Request for Proposal Response
Exhibit D - Supplementary Conditions
Exhibit E - FTA Clauses

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, this Agreement, the Supplemental Conditions, a written change order and/or fully executed City of Nashua Purchase Order, the terms of this Supplemental Conditions or a written change shall control over the terms of the Contract.

4. WORK TO BE PERFORMED

Except as otherwise provided in this contract, CONTRACTOR shall furnish all services, 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.

See Exhibits B and D for Scope of Services.

5. **COMPENSATION.** The CITY agrees to pay the CONTRACTOR compensation for services performed in accordance with this Agreement as follows. Insurance costs shall only be due in the event that the City agrees to the use of the vendor's insurance, under terms acceptable to the City of Nashua.

a. Contracting Fee

	Variable Rate – CDL and Non- CDL	Fixed Rate	Insurance	Total
Year 1 (FY2027 10/1/26-6/30/27 or 0.75 Year)	\$1,614,007	\$541,238	\$0	\$2,155,245
Year 2 (FY2028)	\$2,277,168	\$751,367	\$376,972	\$3,405,507
Year 3 (FY2029)	\$2,339,973	\$777,646	\$393,084	\$3,510,703

Total Not to Exceed – Initial Contract Term	\$6,769,150	\$2,250,664	\$770,056	\$9,789,870
Year 4 (FY2030 – if extended)	\$2,429,562	\$802,305	\$411,951	\$3,643,818
Year 5 (FY2031 - if extended)	\$2,529,392	\$830,503	\$431,738	\$3,791,633

The CITY will pay the fixed costs as listed above. The CITY will pay the CONTRACTOR a variable cost only for hourly costs the CONTRACTOR incurs while operating the service. This hourly cost shall include all costs associated with gate-to-gate service as scheduled by the CITY.

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

Unless CONTRACTOR has received a written exemption from the City of Nashua, CONTRACTOR 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 CONTRACTOR right to payment as the City of Nashua may reasonably require. CONTRACTOR shall submit monthly requests for payment for services performed under this agreement shall be submitted as follows:

Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

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

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

The City of Nashua will pay for work satisfactorily completed by CONTRACTOR. The City of Nashua will pay CONTRACTOR within **30** days of approval by the City of Nashua of the submitted invoice form and reporting as required by the Nashua Transit System. The City of Nashua will make no payments until the invoice and required reporting has been submitted and approved.

6. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until executed by the City of Nashua.

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

CITY OF NASHUA REPRESENTATIVE:

Community Development Division Director

229 Main Street

Nashua, NH 03060

commdev@nashuanh.gov

CONTRACTOR COMPANY REPRESENTATIVE:

Paul O'Brien

Senior Vice President

Paul O'Brien

paul.obrien@transdev.com

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or 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.

James W. Donchess, Mayor
City of Nashua, New Hampshire

Date

Paul O'Brien, Senior Vice President
TransDev

Date

DRAFT - Final Legal and Risk Review Pending

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General Terms and Conditions

1. **DEFINITIONS** Unless otherwise required by the context, "CONTRACTOR", and its successors, transferees and assignees (together "CONTRACTOR") includes any of the CONTRACTOR'S Company, sub, contractors, and subcontractors
2. **CONTRACTOR STATUS:** The parties agree that CONTRACTOR shall have the status of and shall perform all work under this contract as a CONTRACTOR, maintaining control over all its contractors or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Transdev Incorporated, and nothing in this contract shall create any contractual relationship between the City of Nashua and any other contractor or subcontractor. The parties also agree that 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 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** CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. 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 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, 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 CONTRACTORS 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 CONTRACTOR shall not in any way relieve 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 CONTRACTORS 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 CONTRACTOR shall be and remain liable in accordance with the terms of the contract and applicable law.

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 CONTRACTOR to perform work under this contract. Approved key personnel shall not be taken off of the project by CONTRACTOR without the prior written approval of the City of Nashua, except in the event of termination of employment. 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 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 CONTRACTORS performance under the contract. 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 for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if CONTRACTOR should proceed with any or all of the proposed change. If the change causes an increase or a decrease in CONTRACTORS 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 CONTRACTOR for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified CONTRACTOR of the change.

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

Except as provided in this paragraph, 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 CONTRACTOR in the performance of its work under this contract. and that such personnel will be available to 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 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 CONTRACTOR also agree to attend all meetings called by the City of Nashua or CONTRACTOR to discuss the work under the Contract, and that 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** 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 CONTRACTOR. All future questions 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 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 CONTRACTOR prior to having received the City of Nashua's resolution shall be at CONTRACTOR'S risk and expense. At all times, CONTRACTOR shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. 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 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, Professional 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, CONTRACTOR shall receive all amounts due and not previously paid to CONTRACTOR for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to CONTRACTOR in the event of a failure by CONTRACTOR to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner. CONTRACTOR shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. CONTRACTOR may terminate the contract on 10 calendar days written notice if, through no fault of CONTRACTOR, the City of Nashua fails to pay 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, 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, CONTRACTOR shall receive all amounts due and not previously paid to CONTRACTOR for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of CONTRACTOR'S failure. 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 CONTRACTOR until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the 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 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 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 CONTRACTOR such that

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 CONTRACTOR shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the CONTRACTOR assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of CONTRACTOR'S principals, officers, employees, agents, subcontractors, vendors, or suppliers are expressly recognized to be within 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 a CONTRACTOR'S Representative. At all times, CONTRACTOR shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the 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 CONTRACTOR within 14 days after the 30 days described above, the parties shall attempt to resolve the dispute by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties, which agreement shall not be unreasonably withheld. If the parties cannot agree to a mediator within 30 days or the dispute cannot be settled within a period of thirty (30) days with the mediator, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to CONTRACTOR for damages because of hindrances or delays in the progress of the work from any cause, and 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**

Please see Supplementary Conditions document for insurance provisions.

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

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

15. **COMPLIANCE WITH APPLICABLE LAWS** CONTRACTOR'S Company, 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. 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, CONTRACTOR agrees to the following terms. 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. 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, 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.

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

In connection with the performance of work under this contract, 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.

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 CONTRACTOR shall constitute a material breach of the contract.

17. **ENDORSEMENT** CONTRACTOR shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by CONTRACTOR or under its direction as required under the laws of the State of New Hampshire.

18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** 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 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 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 CONTRACTOR'S expense, by 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 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 CONTRACTOR in the performance of its obligations under this contract must be retained by 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 CONTRACTOR shall promptly remit and deliver the materials, at CONTRACTOR'S expense, to the City of Nashua. CONTRACTOR shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of CONTRACTOR'S obligations under this contract without the prior written consent of the City of Nashua.
21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** CONTRACTOR expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by CONTRACTOR (including those remitted to the City of Nashua by 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 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 CONTRACTOR. The City of Nashua shall have the right to reproduce any such materials.

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

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, 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 CONTRACTOR in writing that the whole of the work was completed on the date indicated in the notice or provide CONTRACTOR with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, 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** 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. 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** 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. 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 Professional Transportation Management Company. If any such interest comes to the attention of CONTRACTOR at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. CONTRACTOR also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. CONTRACTOR further warrants that no person having such an interest shall be employed in the performance of this contract. If 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 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, CONTRACTOR shall refund to the City of Nashua any profits realized under this contract, and 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.

CONTRACTOR warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by CONTRACTOR to any officer or employee of the City 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 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 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 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.

DRAFT - Final Legal and Risk Review Pending

Transportation Services Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Transportation Services Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. These Supplementary Conditions shall supersede General Conditions language where any conflict exists.

1. CONTRACT COMMENCEMENT/NOTICE TO PROCEED

The CONTRACTOR (TransDev) shall be prepared to commence work on October 1st, 2026.

2. SCOPE OF SERVICES

The CITY (CITY of Nashua) does hereby engage and retain the CONTRACTOR to operate its Fixed Route & Paratransit Services (FRP)S, pursuant to this Agreement and per the conditions set forth herein.

The CONTRACTOR shall directly operate the FRPS as defined within the Request for Proposals (RFP).

The CONTRACTOR will ensure the delivery of the highest quality (reliable, safe, on-time, and FTA compliant) FRPS. Such service delivery shall comply with all applicable local, state and federal ordinances, laws and regulations.

Delivery of quality operations/supervisory service by CONTRACTOR shall include employment, supervision, and management of at least the following positions: General Manager, Operations Safety Manager, Transit Clerk to staff the Transit Center, and all dispatchers and operators.

The CONTRACTOR shall ensure that FRPS are not missed due to personnel deficiencies. Operations management shall include, but not necessarily be limited to, adequate personnel to maintain quality service (reliable, safe, on-time, and FTA compliant), on-going training of bus operators and staff, and reporting and adequate supervisory staffing.

3. ROUTING, SERVICE AND FARES

The CITY shall establish routes, schedules, fares and policies for the operation of the FRPS. The CONTRACTOR agrees to make recommendations periodically (or when requested by the CITY) concerning changes in the routes, schedules, fares or policies.

The CITY shall prepare all necessary documentary evidence and, if needed, provide testimony relative to any contemplated change in schedule or classification of fares or in service and routing.

4. KEY LEADERSHIP PERSONNEL CHANGES

The CITY shall be notified immediately in the event of a planned or unanticipated change to the Regional Manager or Vice President overseeing NTS.

5. INSURANCE

From October 1st, 2026 through June 30th, 2027 the CITY shall maintain in full force and effect adequate automobile liability and property damage coverage for the vehicles it owns and that are used by the CONTRACTOR in its operations under this agreement. The CONTRACTOR shall be included as an "additional named insured" on all such policies on a primary and non-contributory basis.

Beginning on July 1st, 2027, the CONTRACTOR shall maintain its own insurance in accordance with the requirements of the RFP. The CITY, at its sole discretion, may choose to extend this deadline through a formal contract amendment. If the CONTRACTOR is unable to present insurance terms acceptable to the CITY by March 31st, 2027, the CITY reserves the right to terminate the contract immediately and resolicit Requests for Proposals, specifically Bid Alternative #1. From October 1st, 2026 through March 31st, 2026, the CITY and CONTRACTOR shall work to memorialize terms, policies, and procedures for insurance coverage, accident/incident reporting, etc., subject to final approval by the CITY.

The insurance requirements are defined fully within the RFP, as amended by RFP Addenda, but are as follows:

The insurance requirement specified in this section shall apply to Proposer and any subcontractors, suppliers, temporary workers, independent developers, leased employees, or any other persons, firms or corporations that the Proposer authorizes to work under the Agreement (Hereinafter collectively referred to as "Agents"). Proposer is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. The Proposer is also required to assess the risks associated with the work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover risks; the limit for the commercial general liability insurance in each subcontract shall not be less than \$1 million. Such insurance shall remain in full force and effect throughout the term of the Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, the Proposer shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or fulfilling Proposer's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Proposer or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Proposer's insurance be primary without any right of contribution from the City of Nashua. Prior to beginning work under the Agreement, Proposers shall provide the City of Nashua with satisfactory evidence of compliance with the insurance requirement of this section.

Pricing - Contractor Liability Insurance

Proposers shall include a separate line item in the pricing schedule reflecting the cost of providing contractor liability insurance in accordance with the Insurance Requirements of this RFP. The inclusion of this pricing line item does not create any right or expectation that City-provided insurance will be utilized. The City reserves the right, at its sole discretion, to determine whether City-provided insurance may be considered in lieu of contractor-provided liability insurance under limited circumstances. If the City elects to consider such an approach, the City further reserves the right to negotiate pricing adjustments related to insurance and any other affected cost components. Nothing herein shall be construed as a waiver, limitation, or reduction of the contractor's indemnification obligations or responsibility for its acts or omissions.

A. Types of Insurance

Workers' Compensation and Employers' Liability Insurance - Workers' Compensation with Statutory Limits as required by law

- (a) Employer's Liability coverage with minimum limits of \$1 million.
- (b) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - a. Waiver of Subrogation in the Endorsement Section.

General Liability Insurance

Shall be provided for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1 million each occurrence, \$2 million aggregate. Such insurance shall cover all of Proposer's operations both at and away from the project site.

- a. The insurance shall include coverage for, but not be limited to:
 - a. Premises and operations.
 - b. Contractual liability.
 - c. Personal injury.
 - d. Advertising injury.
 - e. Explosion, collapse, and underground coverage
 - f. Broad form property coverage.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - a. Additional Insured.
 - b. Cross Liability or Severability of Interests Clause.
 - c. Primary and Non-Contributory wording.
 - d. Waiver of Subrogation.

Professional Liability of at least \$5 million.

- a. The insurance shall include coverage for, but not be limited to:
 - a. Punitive damages.
 - b. Contractual liability.
 - c. Valuable Papers & EDP
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- a. The policy shall have a retroactive date that precedes the start of the service.
- b. Such Errors and Omissions policy shall be maintained in full force and effect for three years following the completion of services under the Agreement.
- c. Waiver of Subrogation

Business Automobile Liability Insurance

Shall be provided for bodily injury and property damage with combined single limit of at least \$1 million per occurrence. This insurance shall apply to the maintenance, and operation of all vehicles used in the performance of services under Agreement, including vehicles owned by the City of Nashua and operated by the Proposer. The Proposer's automobile liability insurance shall be primary for claims arising out of the operations, use, or control of City-owned vehicles by the Proposer, its employees, agents, or subcontractors. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- a. Additional insured, but only with respect to the Proposer's operations under the Agreement.
- b. Primary and Non-Contributory wording.
- c. Waiver of Subrogation.

The City of Nashua shall maintain automobile liability insurance for vehicles it owns. Such coverage applies solely to claims arising from the ownership or physical condition of such vehicles and shall not apply to losses arising out of the negligent operation, supervision, training, or conduct of the Proposer or its Agents.

B. Endorsements

Additional Insured - The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the City of Nashua and its directors, officers, employees, volunteers and agents, but only with respect to liability arising out of the Proposer's operations, acts or omissions under the Agreement.

Waiver of Subrogation - The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the City of Nashua and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

Primary Insurance - The referenced policies and any Excess or Umbrella policies shall indicate that they are primary and non-contributory to any other insurance with respect to liability arising out of the Proposer's operations, acts, or omissions under the Agreement and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance affected or which may be affected by the City of Nashua.

Severability of Interests or Cross Liability - The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interest Clause and stipulate that inclusion of the City of Nashua as an Additional Insured shall not in any way affect the City of Nashua's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Proposer. Said policy shall protect Proposer and the City of Nashua in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

Evidence of Insurance All Coverages – Prior to commencing work, the Proposer shall provide the City of Nashua with a certificate of insurance evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the Proposer's policy(ies) will not be cancelled or coverage altered without 30 days prior written notice to the City of Nashua.

Notice of Cancellation – The policies shall provide that the Proposer's policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to the City of Nashua.

Acceptable Insurers – All policies will be issued by insurers with a Best's Rating of A-10 or better.

Self-Insurance – Upon evidence of financial capacity satisfactory to the City of Nashua and Proposer's agreement to waive subrogation against the City of Nashua respecting any and all claims that may arise, Proposer's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

Failure to Maintain Insurance – All insurance specified above shall remain in force until all work to be performed is satisfactorily completed and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach in of this Contract.

Occurrence Coverage – Insurance shall be provided on an occurrence basis, except for Professional Liability coverage, which may be provided on a claims-made basis in accordance with the requirements set forth herein. Deductibles and Retentions – The Proposer shall be responsible for payment of any deductible or retention on Proposer's policies without right of contribution from the City of Nashua.

The CONTRACTOR shall within 15 days of the commencement of this agreement provide Certificates of Insurance specifically confirming the coverage indicated above and confirming the status of the CITY as an "additional named insured," and further providing the CITY shall be notified 30 days in advance of the cancelation of any such policy(ies) or any reduction in coverage.

6. TRANSIT CLERK

The CONTRACTOR shall employ a Transit Clerk. The Transit Clerk shall be on site at the Transit Center from 8:00 a.m. until 5.00 p.m. (with one hour for lunch) Monday through Friday. Transit Clerk shall sell CITY inventory which includes but is not limited to passes and/or books of tickets. The Transit Clerk shall also provide customer service to passenger, answer phones and questions related to the bus schedules or to take paratransit reservations.

The CITY will provide a computer, office phone (long distance included), sales inventory and ticket counter office. The CITY will also supply office equipment associated with the dispatching and call center functions of the operation. This will include radios, paratransit software and fixed route software, GPS capabilities, phones and recording software.

7. GENERAL MANAGER/MANAGEMENT PERSONNEL

Management Personnel, including but not limited to the General Manager, be approved by the Community Development Division Director upon recommendation of the CITY's Transit Administrator. The General Manager/Management Personnel will be an employee of CONTRACTOR and CONTRACTOR's fee will include the salary and related expenses of the Management Personnel. The CITY shall have the right to request the removal and approval of any Management Personnel. The CITY's Transit Administrator shall review all services rendered by the General Manager/Management Personnel. The CONTRACTOR, through the General Manager, shall from time to time, or at the request of the CITY, make recommendations to the CITY regarding FRPS fare structure, service levels, route planning, service modifications, extensions or retractions, organization, administration, personnel level and assignments, major service improvements, and other matters related to transit operations and policies.

The General Manager will assist, prepare, and/or submit assorted Federal, State, or locally required documents, including but not limited to, Triennial Review, TIP Capital Plans, permits, audits, etc. Notwithstanding the above, CONTRACTOR shall not be responsible for filing any state, federal or local regulatory reports on behalf of the CITY.

The CITY can withdraw approval of the General Manager or other Management Personnel at any time. The CONTRACTOR will have ninety (90) days from the receipt of the notice of 'Withdrawal of Approval' of the General Manager/Management Personnel, to furnish a qualified successor General Manager/Management Personnel acceptable to the CITY. Failure of the CONTRACTOR to provide a qualified replacement will constitute a default.

No Management Personnel position shall remain vacant for more than fourteen (14) consecutive calendar days. If necessary, the CONTRACTOR shall temporarily staff until permanent replacement is found. Any staff temporarily filling a vacant position shall be 'backfilled' with an additional person for the duration of the vacancy. A

temporary individual shall meet all the minimum qualifications required of the permanent position. As soon as possible, resumes and qualifications of all proposed candidates shall be submitted for review, and the CITY shall have the opportunity to conduct interviews locally. All expenses related to this process shall be the responsibility of the CONTRACTOR.

The General Manager/Management Personnel shall conduct the day-to-day operations of the FRPS, including but not limited to matters relating to labor relations, delivery of transportation services, safety & security and road supervision. The CITY shall provide an on-site office for the General Manager and an office for the Operations Safety Manager at the Nashua Transit Administration building located at 11 Riverside Street.

The CITY will not reimburse the General Manager/Management Personnel for use of their automobile unless such use is specifically requested and required by the CITY outside of the CITY'S service area. The CITY will not have a vehicle available for the General Manager's personal use. In the rare exception that the General Manager is reimbursed for personal vehicle use, that rate will not exceed the current mileage reimbursement rate permitted by the US Internal Revenue Service.

8. DISPATCH

The CITY will provide a dispatch office space, computer, office phone (long distance included) and dispatch cell phone. The CITY will also supply office equipment associated with the dispatching functions of the operation. This will include radios, paratransit software and fixed route software, GPS capabilities.

9. OTHER PERSONNEL

The CONTRACTOR shall also employ during the terms of this Agreement various other personnel, as reasonably required for the operation of the FRPS. The cost and compensation payable to all personnel shall be the obligation of the CONTRACTOR as an operating expense of the FRPS.

CONTRACTOR shall be responsible for hiring and discharging personnel employed by CONTRACTOR to perform its obligations hereunder; provided, however, that CITY shall have the right to request CONTRACTOR to remove from service to the CITY any employee who, in CITY's sole discretion, is deemed unsuitable for the performance of transportation services for CITY; and provided, further, that CITY shall make such request in writing, state the reasons therefore, and that such request does not violate applicable local, state and federal laws and regulations.

10. ADMINISTRATIVE VACANCIES

If an administrative position is vacant for a period of longer than 30 days, the CITY's Fixed Rate will be reduced by 10% per vacant position until the position is filled and individual working, unless the vacancy is approved by the CITY. If an interim

individual is placed into an administrative position, the position shall not be considered vacant provided that the individual is formally named as the interim and that their previous position is occupied.

11. ACCESS TO RECORDS

CONTRACTOR shall provide access to records as they pertain to Regulatory Compliance including but not limited to training and retraining, DOT card expiration, accidents and incidents under this contract.

12. REGULAR MEETINGS

The CITY will conduct Project Meetings with the CONTRACTOR throughout the contract period to enable orderly review of the progress of the service and provide for a systematic discussion of issues or problems.

Meetings may be held onsite, at a Nashua Transit System, or by Zoom at the option of the CITY. The persons designated by the CONTRACTOR to participate in these meetings shall have the authority required to commit the CONTRACTOR to solutions agreed upon at Project Meetings.

It is anticipated that project meetings will be held weekly to discuss at a minimum service coverage and staffing status for the upcoming two (2) weeks, training, weekly reporting, accidents, incidents, complaints, technology reports.

13. REPORTING REQUIREMENTS

The following reporting shall be provided to the CITY. The CITY and CONTRACTOR agree to identify the reporting format that best provides the following data/information. The CITY reserves the right to add, change or remove reporting requirements.

- a. **Immediate Reporting:** To ensure prompt response, accurate documentation and compliance with workplace safety requirements, the CONTRACTOR Immediately must report any detours, accidents, software issues that may impact service, incidents (slips, trips or falls) regardless of severity, passenger refusal of service and “No Trespass orders” regarding Passenger Suspension, missed trips/late starts (in advance when possible).

Timing: Within 15 minutes of accident/incident

Method: Reports should be made verbally by phone or in person to the Transit Administrator or designee.

- b. **Daily Reporting:** To ensure prompt response and accurate documentation the CONTRACTOR must:

- a. Document any accident, slip, trip or fall regardless of severity, No Trespass/Passenger Removal or Suspension, complaints and incidents, fixed route and paratransit on time performance, detours, software outages and issues including operator manifests documenting missed

ridership, missed trips/partial routes, late starts, early trips, no show and cancellations, vehicle mileage, vehicle damage, vehicle swaps including reason for vehicle swaps, security issues, safety issues.

Timing: Completed by the end of each shift

Method: Documented on the Dispatch log

- b. Document and report missing Transit Center sales transactions, inventory or cash drawer money.

Timing: Completed by end of each Transit Center operating day

Method: Documented on the Dispatch log and emailed to Transportation Administrator or designee.

- c. Document on any missed routes, trips, or late starts

Timing: Completed by end of each shift

Method: Documented on the Dispatch log and emailed to Transportation Administrator or designee.

- i. **Weekly Reporting**

The following reports shall be provided on a weekly basis:

- A. Prior and upcoming week staffing plan including any vacant positions, new hires, classroom training, temporary assignments, and road training and cadetting, possible service reductions.
- B. Previous Accidents, Incidents, and Complaints Status and Resolution
- C. Safety Topics and Safety Meeting Dates
- D. Review of Prior Week Compliance Reporting and Planned Compliance Reviews
- E. Road Supervision
 - I. Road Supervision shall be provided both via technology, on-board and on the road.
 - II. Road Supervision shall be performed on a weekend at least one (1) day per month.
 - III. A weekly Road Supervision report summary shall be provided to the CITY.
 - IV. Road Supervision shall include, but not be limited to the following areas of compliance:
 - i. General Driving (e.g. - maneuvers, lane spacing, stop pullups, lane spacing, turn signals, braking)
 - ii. ADA Compliance
 - iii. Service Animals
 - iv. Announcing Fixed Route ADA Bus Stops/Major Intersections

- v. Early Arrival of ADA Complementary Paratransit Rides
- vi. Ramp Deployment
- vii. Passenger Assistance
- viii. Reasonable Accommodation for Passengers
 - 1. ADA
 - 2. Mobility Device /Scooter/Wheelchair Securement
- ix. Title VI Compliance (LEP/Non-Discrimination)
- x. Missed Trips
- xi. Excessive Trip Length for ADA Paratransit Trips
- xii. Early Departure of Fixed Route Timepoints
- xiii. On Time Performance
- xiv. Handling of Customer Complaints

F. LYTX Reports and Compliance

G. Reconcile Transit Center inventory, daily sales, and cash drawer balance

H. Operating Hours – approved daily worksheet for previous days

c. Monthly Reporting

- i. The following reports shall be provided on a monthly basis:
 - A. Contractor Performance Requirement Reporting by the 3rd day of the month to the CITY
 - B. Submit the completed Billing Hours by the 3rd day of the following month to the CITY
 - C. Submit the Transit Contracting Invoice by the 10th day of the following month to the CITY

d. PTASP Meetings:

Transdev drivers/front line staff and Safety Manager to attend the PTASP meetings, Safety Manager is one of the Safety Officers in the PTASP, Share trends and information regarding the PTASP to the CONTRACTORS employees.

e. Staff Meetings:

Transdev Management Staff to attend NTS Staff meetings to provide updates and respond to questions from the CITY.

14. CONTRACTOR PERFORMANCE REQUIREMENTS

The CONTRACTOR shall be responsible for providing all performance management functions required within the RFP. The CITY will review several measurement methods to evaluate the contract performance including metrics and KPI's to effectively monitor the quality of service. The CITY reserves the right

to modify, add or remove the performance measures as defined in the table below on an as needed basis. CONTRACTOR shall deliver policies and procedures relative to the following performance measures in accordance with the timing below. CITY to review and approve the policies and procedures.

In the event of a lack of compliance as determined by the CITY, the CITY will provide a notice in writing to the CONTRACTOR. The CONTRACTOR is required to submit a response to the CITY within 5 business days which includes a corrective action plan. The corrective action plan shall be reviewed and approved by the CITY prior to implementation. The CITY reserves the right to modify any of the following requirements on a case-by-case basis. Such modification shall be approved by the CITY in writing.

The following measures shall be utilized to determine contract performance and compliance. Corrective actions relative to these measures are defined below.

Performance Measurement Goal	Performance Measurement	Performance Measurement Metric	Key Performance Indicator (KPI)	NTS Oversight Method/ Frequency	Contractor Corrective Action to Achieve Performance Metric	Policy and Procedure Development and Implementation Timing
ADA Paratransit Bus is on time.	ADA Paratransit Bus arrives within the 30 minute pick up window	95% or better arrivals are within the 30 minute pick up window	Number of ADA Paratransit arrivals within the 30 minute pick up window divided by all ADA Paratransit pick ups.	Review service monitoring report monthly.	Arrival times are near or above the 95%.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
ADA paratransit phone call metrics and standards within compliance	ADA prohibits capacity constraints that limit service availability, and long telephone holds.	No more than 5% abandoned calls, maximum hold time is 35 seconds, average hold time 30 seconds, trip request completion 100%	100% of phone calls received / abandoned calls, 100% of phone calls received / complaint, 100% of hold time is 30 seconds or less.	Review and document the telephone system reports, calls and complaints.	Corrective Action Plan from the CONTRACTOR.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement

Civil Rights - Unlimited Fixed Route and Demand Response transportation service for Service Animals	Per 49 C.F.R. Section 37.3, operators must allow any animal individually trained to work or perform tasks for a person with a disability (including guide dogs, signal dogs, and mobility-assistance animals) at no extra cost.	0% denial of Service Animals that perform a task and are in the control of the handler.	CONTRACTOR will Monitor drivers while on the road and track service animal trip denials on the complaint log.	CITY will review the number of service animal denials with the CONTRACTOR weekly.	Corrective Action Plan from the CONTRACTOR.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
Civil Rights compliance	Provide quality transportation service to persons with limited English proficiency and persons with disabilities	Zero capacity constraints	Complaints, on board compliance (NTS) and road supervision reports.	Review and document complaints, on board compliance and road supervision reports.	Corrective Action Plan from the CONTRACTOR.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
Demand Response pull out for scheduled service.	Provide 98% service pull out on time.	Provide 98% service pull out within 5 minutes of scheduled time.	% of pull outs 6 minutes or more than scheduled pull out time.	Review Metrics and KPI's with contractor monthly	Provide a reason for missed trip and solution to achieve 98% pull out in the future.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
Fixed Route - Provide fully accessible, equitable transportation	Fixed Route Bus operators must announce major intersections, transfer points alerts, and requested stops via working Automated Voice Annunciators (AVA) or explicit manual announcements.	100% of the drivers of vehicles that do not have a working Voice Automated AVA must announce major intersections, transfer points alerts, and requested stops.	CONTRACTOR will Monitor drivers while on the road and track trip denials on the complaint log.	CITY will review the weekly road supervision and complaint log with the CONTRACTOR	Corrective Action Plan from the CONTRACTOR.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement

Fixed Route on time performance at all fixed route timepoints.	Bus departs the route timepoints at or after the scheduled time. Bus must not leave the timepoint earlier than the timepoint schedule.	100% departure after the timepoint time not before.	No early departures from a timepoint divided by all timepoint departures.	Review Metrics and KPI's with contractor monthly	Departure times are below 100% on time.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
Fixed Route on-time performance at the Transit Center.	Bus departs the Transit Center at the scheduled departure time. Not earlier than scheduled departure time. (Transit Center is a Timepoint)	90% departures at the scheduled time, not earlier than departure time and not more than 5 minutes past the scheduled departure time.	No of departures on time departures divided by all departures	Review Metrics and KPI's with contractor monthly	Departure times are near or below 90% on time.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
Fixed route pull out for scheduled service.	Provide 98% service pull out as scheduled	Provide 98% service pull out within 5 minutes of scheduled time.	98% of fixed route response service	Review Metrics and KPI's with contractor monthly	Provide a reason for missed routes and corrective action solution to achieve 98% pull out in the future.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
FMCSA Compliance	Licensing, safety and vehicle operations and training	100% compliance	Pre-trip, post-trip, license, ELDT training, vehicle operations, DOT medical card, Road Supervision, LYTX monitoring.	Monitor CONTRACTOR reporting, files and complaints.	Corrective Action Plan from the CONTRACTOR.	15 Days from Contract Effective Date to Develop 30 Days from Contract Effective Date to Implement
FTA and NTD Compliance	Compliance In all areas of Safety, vehicle operations, service and training	100% compliance in all areas of Safety, vehicle operations and training	Drug and Alcohol, PTASP, Triennial Review, vehicle operations, documentation, safety dispatch log, accident, injury, complaint and incident reporting.	Monitor CONTRACTOR reporting, dispatch log, files and complaints weekly.	Corrective Action Plan from the CONTRACTOR.	45 Days from Contract Effective Date to Develop 60 Days from Contract Effective Date to Implement

PTASP and Safety Event - Risk Reduction:	The number of PTASP Safety events are at or below the annual PTASP targets and other safety event trends.	PTASP and Safety events are at or below the annual safety targets.	NTD Safety events are at or below the annual safety targets.	Review Safety Targets with Safety Committee every 6 months or sooner as needed.	Implement Safety Management Systems	30 Days from Contract Effective Date to Develop Processes for the Risk Reduction Program using the PTASP Risk Matrix
PTASP Annual Safety Targets	The number of PTASP Safety events are at or below the annual safety targets.	The number of PTASP Safety events are at or below the annual safety targets.	Use the 3 prior years of actual Safety Target data to calculate the Safety Target for the next year.	Participate in PTASP Safety Committee to approve the PTASP Plan.	Implement Safety Management Systems for Safety Trends, risk mitigation and risk reduction to lower the number of PTASP Safety events.	30 days from Contract Effective to Develop a procedure for designating frontline and supervisor PTASP Committee members and a process filling vacant positions.
Transit Center Sales and reporting	Accurate sales, reconciliation of cash drawer and inventory.	100% accurate sales log, receipt book, reconciliation of sales, inventory and cash drawer.	100% accurate reconciliation of sales, inventory and cash drawer daily.	Reconcile Transit Center Sales for deposit and inventory for accuracy.	Corrective Action Plan from the CONTRACTOR.	10 Days from Contract Effective to Train/Retrain existing Transit Center team on procedures.

15. CDL LICENSURE AND TRAINING REQUIREMENTS

- a. CDL's will be required as follows for approved positions, unless approved by the City in writing
 - i. Dispatchers/Operations Supervisor/Road Supervisor – CDL-B with Passenger Endorsement and no Air Brake Restriction Required. In the event that non-CDL individuals are approved as dispatchers, those individuals are expected to be able to operate non-CDL vehicles.
 - ii. General Manager – CDL-B with Passenger Endorsement and no Air Brake Restriction preferred.
 - iii. Safety Manager – CDL-B with Passenger Endorsement and no Air Brake Restriction Required
 - iv. Drivers/Operators
 - A. CDL-B with Passenger Endorsement and no Air Brake Restriction Required
 - B. 2 Temporary Non-CDL's Permitted with the exception of off-location support services
 - C. Temporary Non-CDL's are required to obtain a CDL-B with

Passenger Endorsement, no air brake restriction, trained to drive, and cadeted within 180 days of hire unless an extension is approved by the CITY.

D. Temporary Non-CDL Drivers shall be deployed on paratransit service.

E. CDL Drivers shall perform fixed-route service with buses.

F. CDL Drivers shall be trained to perform fixed-route service within 30 days of hiring.

b. CDL drivers shall be assigned to perform Fixed Route service unless otherwise approved in writing by the CITY.

c. Any CDL driver that uses a non-CDL vehicle to operate Fixed Route service shall be paid the non-CDL variable rate unless otherwise approved in writing by the CITY.

d. All non-driving and driving positions shall be trained on all applicable demand-response and fixed route software and procedures within 30 days of hiring.

16. WORK HOURS

Normal working hours shall be from 5:00 AM – 11:00 PM Monday through Friday and 8:00 AM – 11:00 PM on Saturday. No Sunday, holiday, or night work will be allowed without written approval of the CITY. Exceptions shall be allowed when providing service for Emergency assistance.

NTS Holiday Closure list:

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Requests for building access beyond those hours or days normally allowed on weekdays and Saturday shall be made by the CONTRACTOR in writing at least 72 hours in advance. CONTRACTOR should not assume requests for building access beyond the hours and days normally allowed will be approved. Requests will be considered on a case by case basis.

17. TRAINING VEHICLE

The CONTRACTOR shall submit a request to use a bus or van for training purposes at least 24 hours in advance for use at any location, including the Crown Street parking lot.

18. SERVICE EXPANSION

In the event of service expansion, the CITY and the CONTRACTOR will both agree on the hourly rate listed above per applicable year, the total vehicle miles and all other

costs associated with new route(s).

19. EMERGENCY SERVICE

In the event the CITY, in its sole discretion, declares an emergency need for transit services, the CITY will pay the CONTRACTOR at a rate of one-and-a-half times (1.5 x) the variable hourly rate the CONTRACTOR incurs while operating the service for the emergency. The hourly costs will be calculated as an accumulation of all hours, for all employees required to work, during the duration of emergency operations outside their regularly scheduled Nashua Transit System hours of operations.

20. FTA CLAUSE APPLICABILITY

In the event of a conflict between applicable FTA Clauses and any term of this or any exhibits, federal clauses shall supersede any contract terms.

21. CITY/CONTRACTOR RESPONSIBILITIES

The CITY and CONTRACTOR responsibilities shall be those defined within the Request for Proposals unless superseded by the Contract or these Supplementary Conditions.

22. DRESS CODE/UNIFORMS

- e. It is the responsibility of the CONTRACTOR to provide a copy of the following Dress Code to employees upon hiring.
- f. It shall further be the CONTRACTOR'S responsibility to enforce the provisions of the Dress Code for all CONTRACTOR employees, as applicable to their position.
- g. It is the responsibility of the CONTRACTOR to provide uniforms for all employees working in the FRPS. The CITY will approve the uniform design, including any patches or logos.
- h. The uniform requirements listed below apply to CONTRACTOR employees performing duties that provide passenger-facing service in person to passengers or customers (Vehicle Operators, Ticket Counter Clerk, Supervisor or Manager that is scheduled to operate a vehicle or work at the Transit Center).
 - i. City approved Work Pants / Dress Pants
 - ii. City approved Work Shirt (short or long sleeve)
 - iii. City approved Fleece Jacket
 - iv. City approved Winter Jacket
 - v. City approved Work Shorts (knee length)
 - vi. Non-slip black shoes or boots
 - vii. Shirts worn under the uniform shirt must be a solid color with no visible logos
 - viii. City approved seasonally appropriate hats, navy blue, white, or black issued by the CONTRACTOR or with the NTS logo may be worn with

the uniform. Additionally, solid color blank hats may be worn if navy blue, white, or black in color.

- i. The General Manager, Supervisors (including training staff), new hires (until uniform is provided),, and Dispatch staff must wear professional business attire appropriate for an office environment.
- j. The CONTRACTOR may request one or more casual days in writing to the Transit Administrator subject to approval of the CITY. The approved dress for casual days shall be approved by the Transit Administrator.
- k. In addition to the language above, the CITY requires the following conditions in-regards to the appearance of all of the employees;
 - i. All employee uniforms shall be clean, pressed, tucked in and well fitting.
 - ii. Uniforms with any signs of staining, fading, fraying and thinning of fabric must be replaced immediately at the expense of the CONTRACTOR.
 - iii. All employees of the CONTRACTOR shall wear their CITY provided badge (with employee picture) during the full duration of their shift.

The CITY reserves the right to request that tattoos or scarification are covered.

23. EMPLOYER STATUS

The CONTRACTOR is the employer for all employees necessary for the efficient and economical operation of the FRPS and to meet CONTRACTOR'S obligations hereunder and shall assume all labor and other employee contractual obligations directly related to the operation of the transit service and CONTRACTOR'S obligations hereunder. The CONTRACTOR shall negotiate all collective bargaining agreements. The CITY shall be consulted and advised on the collective bargaining agreement. Any amendments, modifications, changes, extensions, or renewals of collective bargaining agreements or other employee agreements as may be hereafter entered into by the CONTRACTOR and/or the General Manager shall be communicated to the CITY in writing within seven (7) days.

The parties agree that CONTRACTOR shall have the status of and shall perform all work under this contract as an independent CONTRACTOR, maintaining control over all its employees, consultants, sub consultants, CONTRACTORS, or subcontractors. The only contractual relationship created by this contract is between the CITY and CONTRACTOR, and nothing in this contract shall create any contractual relationship between the CITY and CONTRACTOR'S employees, consultants, sub consultants, CONTRACTORS, or subcontractors. The parties also agree that CONTRACTOR is not a CITY employee.

24. LABOR PROVISIONS

The requirements contained in 29 C.F.R. § 5.5 (b) are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5 . 1. The CONTRACTOR shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all personnel working on the contract. Such records shall contain the name and

address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the CONTRACTOR for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. D.O.T., the Department of Labor or the CITY, and the CONTRACTOR will permit such representatives to interview employees during working hours on the job.

25. TRANSIT EMPLOYEE PROTECTIVE PROVISIONS

The CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

The CONTRACTOR agrees to carry out the transit operations work required or incidental to performance under this Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on this Agreement. The CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this section.

If the services provided under this Agreement involve transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2) and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed, the CONTRACTOR agrees to carry out the work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b). U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter. Copies of any DOL letter shall be given to the CITY.

The CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

CONTRACTOR agrees to include the any applicable requirements of this section in

each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

26. DRUG AND ALCOHOL POLICY

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655. To certify compliance, the CITY shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The CONTRACTOR must work jointly with the CITY to submit annual Drug and Alcohol MIS reports to the Federal Transit Administration.

27. PRIVACY

The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

28. MATERIALS, EQUIPMENT AND FACILITIES

The CITY shall provide and furnish two offices, driver's room and lockers for the operators.

The CONTRACTOR shall operate the equipment provided in conformance with all safety requirements of the State of New Hampshire Motor Vehicles Safety Standards, to provide the level of service as specified by the CITY. The CITY shall be provided with the original Pre/Post trips documentation on a daily basis.

To the extent required by applicable federal laws, state statutes and local ordinances, the CITY shall be responsible for and secure all local, state, and federal franchises, permits, licenses, or operating rights as may be necessary for the CONTRACTOR to operate the CITY'S service.

29. CONTROL OF SERVICE

The CONTRACTOR shall be responsible for the day-to-day operation of the FRPS. The CONTRACTOR shall advise the CITY of matters of importance concerning operation of FRPS and make recommendations when appropriate. Routing, scheduling, fares, and policies governing the FRPS are under the purview of the CITY. The CITY will be responsible for directing any service cancellation due to inclement weather.

The CONTRACTOR is associated with the CITY only for the purposes and to the extent specified in this Agreement, and in respect to performance of the contracted services pursuant to this Agreement, CONTRACTOR is and shall be an independent CONTRACTOR. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the CITY whatsoever with respect to the indebtedness, liabilities, and obligations of CONTRACTOR or any other party.

30. CHARTER

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

31. SCHOOL BUS

The CONTRACTOR may not engage in school bus operations, utilizing equipment or facilities of the CITY, exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided in Section 3(g) of the Federal Transit Act, as amended, 49 U.S.C. app. § 1602(g), and FTA regulations "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued.

32. RECORDS

Where the CITY is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(), the CONTRACTOR agrees to provide the CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO

CONTRACTOR access to CONTRACTOR'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311 .

The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case CONTRACTOR agrees to maintain same until the CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The CITY shall require copies of all of the records of the CONTRACTOR'S employees to include but not limited to driver's license, driver's record, DOT physicals and requirements, training records, certified background report, certified drug & alcohol report and any other paperwork that pertains to the operating of the CITY'S FRPS. The CITY shall have the right of access to and inspection of the records during this agreement.

All operators must have annual DOT physicals. The CONTRACTOR shall provide an annual report that states the operators did have their annual physicals.

33. EMPLOYER FIDELITY BOND

The CONTRACTOR shall maintain a fidelity bond protecting the CITY from theft or other losses covering its General Manager and other employees directly involved in the FRPS at such levels and deductibles as directed by the CITY. The CONTRACTOR shall provide copies of such documentation to the CITY.

34. WAIVERS OF SUBROGATION.

The CITY and the CONTRACTOR mutually agree to waive all rights of subrogation against each other and any of their respective CONTRACTORs and subcontractors, agents and employees, for any and all claims, demands, suits or occurrences of any kind, including without limitation for bodily injury or property damage.

35. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the CITY and the CONTRACTOR and no oral agreement, promise, statement or representation, which is not herein contained, shall be binding upon the CITY or the CONTRACTOR. All amendments to this Agreement shall be in writing and executed by both parties.

36. CONTINUING EFFECT

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the CITY. The CONTRACTOR shall not assign this contract or any rights hereto, without the prior written consent of the CITY.

37. SEVERABILITY

If any provision of this Agreement is or becomes void or unenforceable by law, the other provisions shall remain valid and enforceable.

38. TERMINATION

Termination for Default, Breach or Cause: If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract. CITY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by CITY that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood. events which are not the fault of or are beyond the control of the CONTRACTOR, CITY, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure

CITY, shall, in the case of a termination for breach or default, allow the CONTRACTOR (10) ten days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If CONTRACTOR fails to remedy to CITY'S satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by CONTRACTOR of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

WAIVER OF REMEDIES FOR ANY BREACH: In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant. term or condition of this Contract, such waiver by CITY shall not limit CITY'S remedies for any succeeding breach of that or of any other term, covenant, or condition of this

Contract.

39. TERMINATION FOR CONVENIENCE

(Cost-Type Contracts): Either party may terminate this contract, or any portion of it, by serving a 120 day written notice or termination on the other party. If the termination is for the convenience of CITY, the CONTRACTOR shall be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

CONTRACTOR may, upon the giving of ninety (90) days advance notice, terminate this Agreement if the CITY fails to cure a default within thirty (30) days of written notice of such default given by the CONTRACTOR. If more than thirty (30) days is required to cure such default, a reasonable period of time shall be permitted, provided both parties agree in writing as to the time period to be substituted. Default as used herein means failure to comply and fulfill material terms, obligations and conditions of this Agreement.

40. CAPTION

The caption headings of each paragraph hereof are intended for ease of reference only and do not constitute part of this Agreement. Likewise, the captions shall not be deemed to indicate the intentions of the parties hereto.

41. WAIVER

The failure to enforce at any time any of the provisions of this Agreement and to require at any time performance of any party of any of the provision hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement, or any part hereof, or the right of each party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

42. RESOLUTION OF DISPUTES. BREACHES AND OTHER LITIGATION

The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Agreement. Disputes that cannot be resolved by negotiation may be submitted to mediation using a mutually agreed upon mediator. In the absence of an agreement on a mediator, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. If mediation is not successful, the parties may pursue their remedies as they choose pursuant to this Agreement. Nothing in this Agreement shall be deemed to prevent the parties from agreeing in the future to submit a dispute to arbitration.

43. PERFORMANCE DURING DISPUTE

Unless otherwise directed by CITY, CONTRACTOR shall continue performance

under this Agreement while matters in dispute are being resolved.

44. CLAIMS FOR DAMAGES

Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of his or her employees, agents or others for whose acts he or she is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

45. RIGHTS AND REMEDIES

The duties and obligations imposed by the Agreement and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by CITY or the CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

46. FUNDING AVAILABILITY/SERVICE REDUCTION

This contract shall be conditional upon funding availability. In the event that funding is no longer available or is reduced, the CITY reserves its right to modify service hours or contractor scope as needed.

47. INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

48. LOCATION GUIDE

The CONTRACTOR shall update the Location Guide within 60 days of the effective date of this contract.

49. AUDIT PARTICIPATION

The CONTRACTOR shall provide documentation of compliance with 49 CFR Chapter 53 (5307 and 5310) Code of Federal Regulations which focuses on

public transportation programs, providing the legal framework for federal assistance, safety oversight, and operational requirements for transit systems. This information may be found in the annual FTA Master Agreement and the annual Contractors Manual for Triennial Reviews which requires NTS to perform contractor's oversight. This documentation shall be provided as part of the Triennial Review process and on an as needed basis as required by the CITY or other reviewers. The CONTRACTOR shall provide other audit documentation as may be required as part of other audit processes by NHDOT, NHDHHS, and others.

DRAFT - Final Legal and Risk Review Pending