Request for Proposals
RFP0265-012523

City of Nashua, NH
Request for Proposals
Land Use Code Update

Proposals Due By:
3:00 P.M. on January 25, 2022
Purchasing Department, City Hall

Release Date: December 1, 2022

Submit Proposals To:

City of Nashua
Purchasing Department
City Hall
229 Main Street
Nashua, NH 03060-2019

INSTRUCTIONS TO VENDORS:

The City is now accepting proposals electronically via Bid Express. Please review the attachments, *Bid Express Vendor Guide* and *Vendor Set-up Guide* for more information. If you choose to submit a paper response it must be submitted in a sealed envelope **with one digital PDF copy on a USB storage device and one (1) original hard copy** clearly marked **"RFP0265-012523".** The names of those proposers that submit a response will be posted on the website, under Bid Results, within 24 (24) hours of opening.

Regardless of the method of submission, responses shall be submitted, as outlined in the preceding paragraph, no later than **3:00 PM January 25, 2023,** c/o Purchasing Office, City Hall, Room 11, 229 Main Street, Nashua NH, 03061-2019. Responses must be submitted in the format provided and address the items specified in the Request for Proposal. Postmarks or other timestamps will not be accepted in lieu of actual delivery. The consultant team can use whatever delivery mechanism it chooses as long as it remains clear that the consultant team is responsible for submissions prior to the date and time.

Complete specifications and related documentation are available on the website, www.nashuanh.gov, under Services, Bid Opportunities, Current Bids; and on the Bid Express website. Refer to Document RFP0265-012523 and related documents. **Please note paper copies will not be available. No RFP documents are available at the Central Purchasing Office.**

A pre-proposal conference will be held via Zoom at 3:00PM Eastern, on December 14, 2022.

Nashua Purchasing is inviting you to a scheduled Zoom meeting.
Join Zoom Meeting
https://us06web.zoom.us/j/6035893330?pwd=YjZ5ZUtSMURySmdBRms1bXBLQ1NUdz09

Meeting ID: 603 589 3330
Passcode: 5893333
One tap mobile
+13092053325,,6035893330#,,,,*5893333# US

The timeline for this project is as follows:

	Date	Time
Pre-proposal Conference (via Zoom) Meeting ID: 603 589 3330 Passcode: 5893333	Wednesday, December 14th, 2021	3:00 PM
Deadline for Vendor Questions	Wednesday, December 21, 2022	3:00 PM
Answers/Clarifications Posted	Wednesday, December 28, 2022	3:00 PM
RFP Responses Due	Wednesday, January 25, 2023	3:00 PM
Potential Interview Date	2 weeks subsequent	TBD

Vendors are encouraged to submit questions via email or via Bid Express; however, the City assumes no liability for assuring accurate and complete email transmission/receipt and is not

responsible to acknowledge receipt. **Inquiries** must be submitted **in writing**, citing the RFP title, RFP number, Page, Section, and received no later than **December 21, 2022 at 3:00PM to:**

Amy Girard
Purchasing Manager
City of Nashua
229 Main Street
Nashua, NH 03060
Email: girarda@nashuanh.gov

The City will consider all timely-received questions and requests for change and, if reasonable and appropriate, will issue an addendum to clarify or modify this RFP. Answers to vendor submitted questions and other addenda will be posted under document RFP0265-012523 on the City of Nashua website, www.nashuanh.gov, under Services, Bid Opportunities, Current Bids; and to Bid Express no later than Wednesday, December 28, 2022 at 3:00 PM.

Pursuant to NRO 5-71 (A), the City of Nashua supports the concept of purchasing products which are biodegradable, can be or have been recycled, or are environmentally sound. Due consideration will be given to the purchase of such products. If you are bidding on any such products which qualify, please so indicate in a cover sheet by item number and description. We are also conscious of energy use and encourage bidders to propose products that are energy efficient.

All proposals are binding for ninety (90) days following the deadline for proposals, or until the effective date of any binding resulting contract, whichever is later.

Proposals must be submitted in the format provided and address the items specified in this request. The City may reject any or all of the proposals on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim or cause of action by any unsuccessful bidder against The City. The City reserves the right to waive any irregularities when the public interest will be served thereby. The City also reserves the right to negotiate any change or amendment in any proposal without soliciting further requests for proposals if the action is necessary for the best interest of The City.

The City of Nashua will reject the proposal of any proposer who is presently debarred, declared ineligible or excluded by any Federal department or agency, and reserves the right to reject the proposal of any proposer who has previously failed to perform any contract properly for any purchaser, or to complete on time, contracts of a similar nature, who is not in the position to perform the contract, or who has neglected the payment of bills or otherwise disregarded its obligations to clients, purchasers, subcontractors, material men, or employees.

The City is exempt from all taxes. All proposals must be FOB Nashua, NH. All proposers must comply with all applicable Equal Employment Opportunity laws and regulations.

Pursuant to NRO 5-78 (F), the Purchasing Manager shall not solicit a bid from a contractor who is in default on the payment of taxes, licenses or other monies due the City. Therefore, this proposal request is void as to anyone who is in default on said payments.

Respectfully,

Amy Girard
Purchasing Manager
City of Nashua

GENERAL REQUIREMENTS

A. To be eligible for an award, a Vendor must be deemed "responsible". A responsible Vendor:
   - has the ability, capacity and skill to provide the goods or services required
   - can provide the goods or services within the time frame specified
   - has a satisfactory record of integrity, reputation, judgment and experience
   - has sufficient financial resources to provide the goods or services
   - has an ability to provide future maintenance and support as required
   - providing the vendor has provided goods or services to the City, has developed a positive track record with the City

B. The successful Vendor will be required to provide the City with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten (10) calendar days after the City issues the notice of award. The City requires thirty (30) calendar days written notice of cancellation or material change in coverage. The certificate 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, Employer's Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance:
   - General Liability insurance in the amount of $1,000,000 per occurrence and $2,000,000 aggregate
   - $1,000,000 Combined Single Limit Automobile Liability (coverage must include all owned, non-owned and hired vehicles)
   - Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, $100,000/$500,000/$100,000
   - Professional Liability: $1,000,000

All Vendors and subcontractors at every tier under this project will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

C. The City also reserves the right to negotiate any change or amendment in any proposal without soliciting further proposals if the action is necessary for the best interest of the City.

D. The City may conduct discussions with responsible Vendors prior to selection. Successful Vendors shall begin performance upon receipt of an executed contract and a valid purchase order issued from the City.

E. The City may reject any and all responses on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim, or cause of action by any unsuccessful vendor against the City.

F. After the initial designation of a Vendor, City Staff will work with the selected Vendor to negotiate final terms and conditions between the City and the successful Vendors prior to the Contract Award.

G. The Vendor shall meet all requirements of the Americans with Disabilities Act.

H. The City encourages disadvantaged business enterprise (DBE) participation from contractors and/or subcontractors.

I. The Vendor should understand that under the New Hampshire Right-to-Know Law, all documents submitted in response to this request, including financial information, are considered public information and will be made available to the public upon request, unless specifically exempted under the law.

J. Any vendor submitting a proposal may appeal a pending award prior to award by the City. The appellant must:
   a. Submit a written protest to the City's Purchasing Manager within five (5) business days after the proposal opening.
   b. Describe, in the written protest, the issues to be addressed on appeal
   c. Post, with the written protest, a bond with a surety meeting the requirements of General Condition 5.02 authorized to do business in this state or submit other security in a form approved by the City who will hold the bond or security until a determination is made on the appeal.
   d. Post the bond or other security in the amount of 25% of the total dollar value of the appellant's bid, up to a maximum bond or other security amount of $250,000.00.
   e. Not seek any type of judicial intervention until the City has rendered its final decision on the protest.

   The City will stop award actions until after the City's Purchasing Manager has responded in writing to the protest. If the appellant is not satisfied with the response, the appellant may then protest to the Board of Aldermen, who will render a final decision for the City. No award protests will be heard by the Board of Aldermen unless vendor has followed the appeal process.

   If an appeal is granted, the full amount of the posted bond or security will be returned to the appellant. If the appeal is denied or not upheld, a claim may be made against the bond for expenses suffered by the City because of the unsuccessful appeal.

   The City is not liable for any costs, expenses, attorney's fees, loss of income, or other damages sustained by the appellant in a bid appeal process.

K. The City assumes no liability for the payment of costs and expenses incurred by any vendor in responding to this request. All proposals become sole property of The City. This is not a contract and shall not be interpreted as such but rather serves as an instrument through which qualifications are solicited.

PROJECT SCOPE

Project area and scope of work is defined in the project scope of work begging on page 9 of this document.

Working on behalf of the City, the Vendor shall be consistent with State and Federal statutes and be an advocate for the City throughout the project.

PROPOSAL PROCESS & RESPONSE

The RFP response should be fully self-contained, concise, and display clearly and accurately the capabilities, knowledge, experience, and capacity of the Vendor to meet the requirements of the project and the proposal. Vendors are encouraged to utilize methods they consider appropriate in communicating the required information. At a minimum, this will include submission of the information requested below:

A. Vendor description and project team
   1) Vendor firm name, business, address, website address and contact information
   2) Year established, number of employees, office locations, etc.
   3) Vendor firm specialties: list your firms area(s) of expertise
   4) Identify a project manager and all key project personnel and provide their direct contact information. No key staff member will be reassigned without written approval by the City.
   5) Identify minority or women owned business status

B. Bid Sheets

Completed bid sheets must be submitted on vendors company letterhead utilizing the format provided and must include:

1) Qualifications Statement
2) References: include at least 3 professional references (business name, contact, email address & phone number). References may be contacted as part of our preliminary bid review to assist project committee in assessing Vendor qualifications. Current City of Nashua personnel and elected officials shall not be used as references.
3) City Projects: Provide a list of project awards Vendor has received from the City of Nashua in the past 5 years. Please include project detail, City department and City project lead.
4) The Scope of Work section of the proposal should explain the Scope of Work as understood by the Vendor and detail the approach, activities and work products. Your proposal shall also include and identify suggested revisions and improvements to the Scope of Work that might benefit the project either in efficiency or financially.
5) Proposals should be inclusive of all costs necessary to execute this project.
6) Any additional information that the Vendor considers pertinent for consideration should be included in a separate section of the proposal. The City solicits a statement about why the Vendor feels its approach would be the most cost effective to the City.

C. General Submission Requirements

1) Responses to this RFP shall be submitted on 8.5 inch by 11 inch sheets.
2) If submitting a paper proposal, responses shall be bound.
3) Pages will use one inch minimum margins and font size shall be eleven points (minimum) and should be double-side printed.
4) There is no page limit, however it is noted that relevance and **brevity** shall be considered during evaluation of the submittals.
5) Bids submitted electronically via Bid Express are preferred. If you choose to submit a paper response, then one hardcopy and an electronic copy on a USB device shall be submitted.

PROPOSAL REVIEW/EVALUATION

Proposals shall be evaluated by specific criteria set forth in this RFP. All proposals considered responsive shall be evaluated for completeness of data provided, support for all claims made, and the overall approach taken. The objective is to select a Vendor, through the outlined evaluation process, whose proposal is judged to be in the best interest of the City.

A. INITIAL REVIEW-SUBMITTED PROPOSALS

All proposals will be initially evaluated to determine if they meet the mandatory requirements.

1) The proposal must have been received on or before the specified deadline.
2) The proposal must be complete, in the required format, and comply with all the material requirements of this RFP.
3) Vendors must provide references as outlined.

Failure to meet these requirements may result in a rejected proposal. No proposal shall be rejected, however, if it contains a minor irregularity, defect, or variation, if the irregularity, defect, or variation is considered by the City to be immaterial or inconsequential. In such cases, the Vendor will be notified of the deficiency and given an opportunity to correct the irregularity, defect, or variation, or the City may elect to waive the deficiency and accept the proposal.

B. CRITERIA FOR SELECTION

All proposals received from Vendors will be reviewed and evaluated by a committee of qualified personnel. This committee will recommend for selection the proposal which most closely meets the requirements of the RFP and is the most advantageous to the City. The City of Nashua is not bound to accept the lowest priced proposal if that proposal is not in the best interest of the City as determined by the City. The City reserves the right to accept or reject any and/or all offers, to waive any and/or all formalities, to clarify any discrepancies in the proposal and to award a contract in the best interest of the City.

Contract(s) will be awarded based on a competitive selection of proposals received. A review committee comprised of city stakeholders will be conveyed to evaluate the proposals and provide a recommendation. Below are specifics as to how the proposals are weighed for decision making purposes.

1) Qualifications and experience of project team
2) Past performance and service on similar projects and responses from client references
3) Proposed Project Completion Dates
4) Overall quality of Bid
5) Total cost proposed
6) Classification as a disadvantaged business enterprise

These criteria will be used to evaluate, rate, and rank the proposals received. The City may choose to interview the top three respondents following ranking or immediately select a Vendor from the proposals submitted.

Criteria	Weight
Qualifications and Experience: • Respondent must demonstrate adequate experience in the following areas: qualification, general experience and technical competence of the project team • Experience with similar type/size project • Feedback from References with projects similar in size & scope • Expertise and resources that can perform the necessary tasks required to deliver results. • Bidder must provide information that demonstrates they possess the	45%
Overall Impression of Proposal • Organization, clarity, conciseness and thoroughness. • Approach to the scope of services and statement of works • Proposed project schedule	25%
Additional Considerations • Qualification as a DBE • Qualification of a Local preference • Use of Environmentally sound products in proposed solution	10%
Cost Proposal: Cost proposal should include any payment schedule setting forth the frequency and amount of progress payments, and identifying the tasks and deliverables (“milestones”) to be completed for each payment to be deemed earned.	20%

ADDITIONAL CONSIDERATIONS:

The Vendor selected shall be expected to comply with all applicable federal and state laws in performance of services. The consideration of all proposals and subsequent selection of the successful vendors shall be made without regard to race, color, sex, age, handicap, religion, political affiliation or national origin. Services provided by the successful Vendor shall be rendered through a Professional Services Contract, which has been included in Exhibit A.

Respondent Vendors must identify any exceptions or objections it has to the City's sample Standard Form of Agreement, General Conditions, and Supplementary Conditions documents. Copies are part of this Bid in Exhibit A.

The City may from time to time revise the above listed documents. The City will not accept or entertain any exceptions or objections to the above listed documents at any time after Proposal submittal except and only to the extent the City subsequently makes a material change to a substantive provision of the above listed terms and conditions.

The proposal must declare that it is made without collusion with any other person or entity submitting a proposal pursuant to this RFP

Disclosure of any potential conflict or statement that there are none to the best knowledge of the Vendor(s). Also, Vendor(s) should state its intention to conform to the no conflict provisions of the RFP .

Prospective applicants who have any questions regarding this opportunity may contact:

Amy Girard | Purchasing Manager
City of Nashua | Administrative Services Division
229 Main Street | Nashua, NH 03060
Email: purchasing@nashuanh.gov
Ph: 603-589-3332

City of Nashua, NH
Request for Proposals
Land Use Code Update

General Introduction

The City of Nashua, NH is seeking qualified proposers with considerable experience in urban design, land use and transportation planning, economic analysis, natural resources, arts and cultural resources, equity, sustainability, resiliency, community engagement, and New Hampshire land use law to update the City's Land Use Code. The new Code will provide the City's elected and appointed officials, property owners, businesses, developers, non-profits, institutions, residents and staff with clear and concise land use regulations, packaged in a legally defensible document, that will manifest the vision articulated by the 2021 Imagine Nashua Master Plan.

Multidisciplinary teams, which may be a single firm or a consultant team consisting of individuals and/or firms with specialized expertise, are encouraged to submit a proposal. It is anticipated that work will begin in the spring of 2023 and the completed code will be adopted by the City in summer/fall of 2024.

This RFP is a competitive process to select a proposer that best meet the needs of the City based on qualifications, service, capabilities, and prices, as well as other factors. This RFP contains instructions governing the proposals to be submitted, the materials to be included, and the requirements that must be met to be eligible for consideration.

Background

The City of Nashua, New Hampshire is a vibrant, thriving former mill town that was first settled in 1655 and officially declared a City in 1853. Situated along the Merrimack and Nashua Rivers, the "Gate City" is the doorway to New Hampshire from Massachusetts, and 45 miles from Boston. With a population of 91,000 residents inhabiting 32 square miles, Nashua is New Hampshire's second largest City. Surrounded by towns sporting quintessential colonial New England charm, Nashua serves as the hub of the region. Nashua offers residents and visitors a vibrant arts community that includes galleries, music and theater, an array of dining destinations, tax-free shopping at local boutiques and specialty stores or your favorite well-known retailers. A progressive public-school system, extensive parks, and an active Recreation department all lend to Nashua being a wonderful community in which to raise a family.

Nashua is the only city in America to be ranked #1 Best Place to Live by Money magazine twice, and was just named in the top 100 cities across the nation for 2022, including best in New Hampshire. Its traditional New Hampshire heritage, combined with progressive New England urban qualities and vitality, attracts people in every stage of life.

Nashua operates under a City Charter form of government led by a working Mayor and fifteen-member Board of Aldermen.

The City has a very strong economy, as a key commercial and industrial center for the state and the region. It serves as a retail hub due to NH's lack of a sales tax and proximity to the Massachusetts market. The City enjoys a AAA bond rating from both Fitch Ratings, Inc and S&P due to its strong budgetary performance and financial management.

The City has the following areas of focus and future areas of opportunity that will need to be contemplated during the Code update:

- Nashua has limited vacant land available for future development. The remaining land that is undeveloped has mostly been restricted from future development through a robust conservation program over the last twenty years. It is only logical that the City will need to consider infill and vertical growth in the urban core. The new Code should provide guidance for how the downtown and other neighborhoods achieve their visions of their futures, improve their urban and architectural design, and increase density where most appropriate.
- The zoning map does not reflect current land use patterns along many of Nashua's most heavily used corridors. Since the last code update, many variances have been granted and several overlay districts have been instituted to better serve shifting market demands, resulting in an incongruous patchwork of districts that do not reflect the current vision of the Master Plan.
- The City is facing a housing crisis. As evidenced by the 2020 Housing Study the housing vacancy rate has been below 1% for several years. There is a lack of supply across all housing types and levels of affordability; and a mismatch of housing types, given significant growth in smaller and single person households. The lack of supply is pinching the most vulnerable citizens, millennials, seniors and now the community as a whole. Affordability and livability are key topics that will need to be explored, so the City can implement solutions to this critical aspect of its future.
- The City's downtown has seen a resurgence through many public and private investments, including a strong grassroots arts community and the first downtown housing development in more than a century. There is a thriving downtown events schedule and the new Performing Arts Center is under construction in the center of Main Street. Nashua is home to the annual International Sculpture Symposium and the arts community will be a key partner in the future of Nashua's redevelopment.
- New England has some of the oldest buildings in the country and Nashua is no exception. New opportunities for redevelopment should be encouraged, while highlighting the preservation of heritage, historic structures and neighborhoods. Preservation of historic properties and resources should be balanced with sustainability, energy efficiency and resiliency, along with the character of place where affordability, diversity and density can thrive.
- While still heavily reliant on automobiles, the City has seen a significant increase in pedestrians, bicycles, scooters and e-devices. There is a desire to develop standards that encourage alternative modes of transportation. These will be an important tool for reducing reliance on cars in the City's densest districts and corridors.
- The City adopted the following three goals in 2019 to advance the overall sustainability of the community: Reduce school, municipal building and infrastructure greenhouse gas emissions by 25% by 2025; reduce municipal vehicle emissions by 25% by 2025; and that the school and municipal system will derive 100% of its energy from renewable, clean energy resources by 2050. In order to achieve these goals for the City and the larger community, the City needs to determine how these goals will align with the Land Use Code.

Past and Present Planning Work

The City updated its Master Plan over the course of 2020 and 2021 and adopted the plan in October 2021. This comprehensive plan established the following vision:

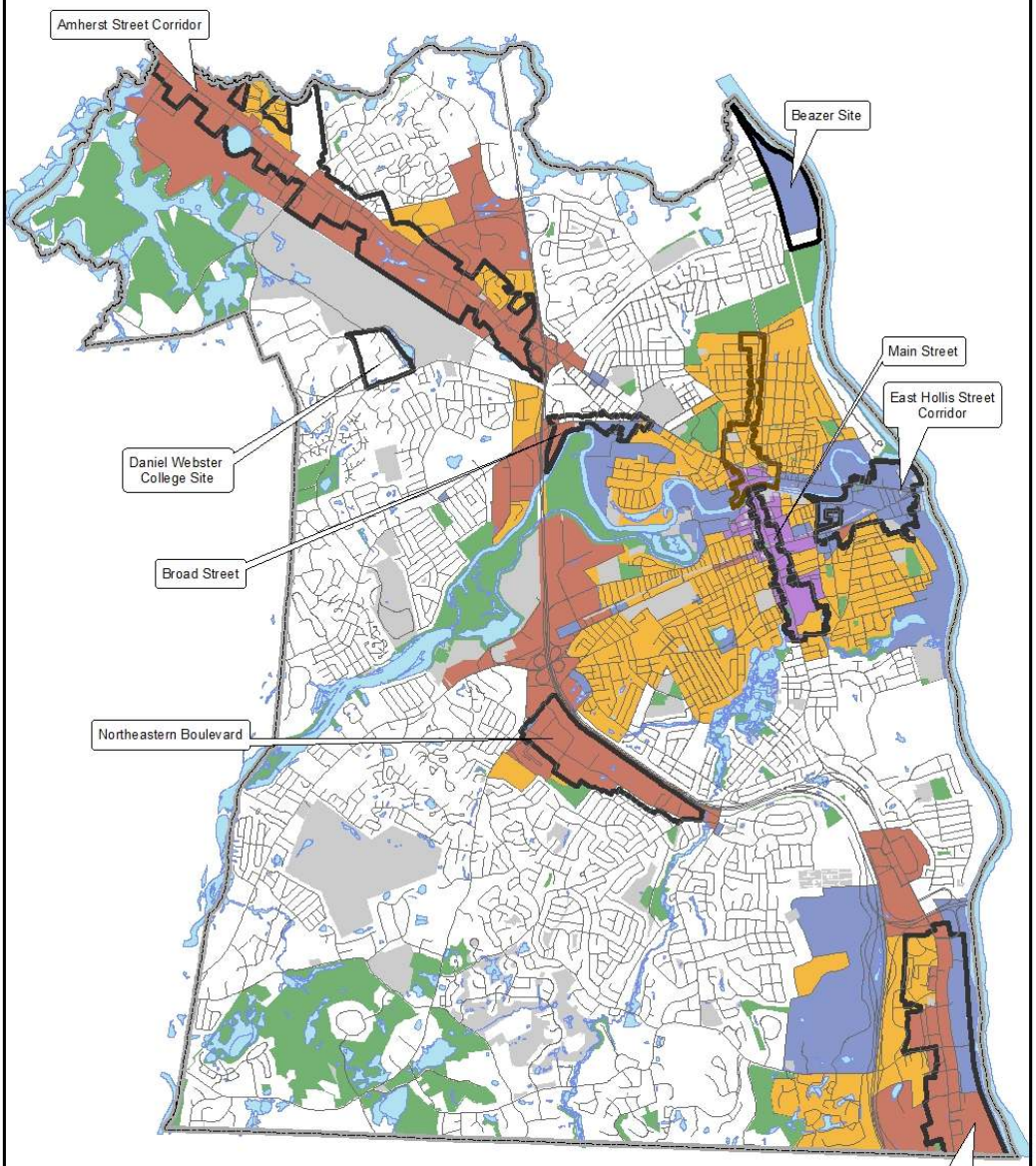
Nashua is committed to being a welcoming, diverse, and forward- thinking city that offers a variety of economic, housing, educational, and recreational opportunities throughout a vibrant and resilient community that provides a high quality of life.

The Master Plan articulated numerous goals in pursuit of this vision, several of which point towards adoption of a form-based code. The City recognizes the need to plan for development demands and through the Master Planning process, has identified the priority redevelopment locations listed below and conducted modest visioning for these areas. Some of these areas as well as others should be considered as candidates for form-based regulations.

Supplemental planning documents and studies that support the Master Plan can be found HERE.

Priority Redevelopment locations:

- Amherst Street Corridor – A high-volume corridor with a vision to introduce high-density residential in key areas while improving the streetscape and incorporating non-motorized transportation facilities.
- Daniel Webster College – A former institution of higher education. Any vision will need to integrate the redevelopment into its surroundings.
- Broad Street – A mixed-use corridor, sections of which are well-suited for upzoning. The corridor needs a more coherent sense of urban design.
- Northeastern Boulevard – A traditionally industrial corridor that has seen the nature of its uses change. There is a strong community interest to maintain the corridor as a location for industrial and complimentary uses. The zoning for this corridor will need to be adapted accordingly, with an improved streetscape playing a key supporting role.
- Beazer Site – A brownfield in northeast Nashua for which the Master Plan considered a village center and multiple forms of housing.
- East Hollis Street – A historically industrial area that is currently experiencing residential development, supported by a Transit Oriented Overlay district. A future rail station with connection to Boston presents significant opportunity.
- Main Street – While the Master Plan primarily contemplated a redesign of the streetscape, Main Street and the surrounding area should be considered for form-based regulation.
- Daniel Webster Highway – A well-established and heavily utilized commercial corridor. This area will require significant visioning, especially as the retail environment continues to change.



Areas Considered for Form-Based Regulations

- Target Redevelopment Areas
- Urban Core
- Mixed Residential
- Urban Transitional
- Commercial Corridors
- Historic District

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Prepared by:
City of Nashua
Planning Division
229 Main Street
Nashua, NH
11/18/2022

Project Objectives

The objective of this project is to develop a new Land Use Code that is grounded in the principles of new urbanism and smart growth and strives to manifest and build on the vision set forth in the 2021 Master Plan. The Code will be approachable, user-friendly, illustrative, and will provide clear and concise development standards that will reduce the need for variances and the number of existing non-conformities. This should be accomplished through district revisions tailored to the existing built environments while also contemplating reasonable future expansion and densification.

The Code will provide standards that promote interconnected pedestrian and bicycle facilities, mixed-use development, and a quality urban experience through the enhancement of the public realm and streetscape All existing neighborhoods should be entitled to incremental growth by right, but not be subject to rapid densification, unless appropriate and accommodated by existing City infrastructure.

Scope of Services

The Proposer shall prepare and submit to the City for approval a project management plan that specifies a schedule of work, the roles and responsibilities of the Proposer and any sub-contractors, identifies specific work tasks, milestones, review/comment milestones and a public outreach plan. Additionally, the Proposer shall be available remotely to participate in meetings at least every two weeks with the City's Project Manager and meetings with specific City Departments, key stakeholders, and outside agencies, as necessary.

The successful Proposer will develop and deliver a professional Land Use Code, meant to supersede the current Land Use Code for the City of Nashua, that will aid the City in achieving the vision and goals articulated by the 2021 Master Plan. The Proposer will have overall responsibility for the creation of the City's Land Use Code update, lead the Code update efforts, and will be responsible for the timely completion of the Code update. All work shall be completed in accordance with applicable City standards and within the agreed upon timeline. This includes, but is not limited to, preparing and maintaining a detailed project timeline (the general timeline is expected to commence shortly after the new year in 2023 and is expected to last 12-18 months), and the tasks listed below to be detailed and agreed upon in the final contract with the selected Proposer:

1) ***Interviews***. The successful Proposer will interview appropriate stakeholders involved with the project. These interviews will occur with a staff steering committee and a community steering committee. Focus groups will also be held with the Planning Board, Zoning Board of Adjustment, Conservation Commission, Historic District Commission, the Board of Aldermen, and others at various points in the process.

2) ***Site Analysis***. The successful Proposer will become familiar with historical forms and patterns of development, general location of land uses, and the basic market environment in the City.

3) ***Engagement Process***
    a) Coordination with City Divisions
        i) The selected consultant team will primarily coordinate with the City's Planning Manager for the Code update. However, there are several other City Departments that have a vested interest in the outcome of the project. An internal steering committee will be convened including the Mayor (or designee) and members from the following Divisions: Corporation Counsel, Public Works, Economic Development,

Community Development, etc. The Proposer will be responsible for facilitating these meetings and coordinating input from these City Departments.

b) Engagement with Outside Stakeholders (ad hoc)
   i) The selected consultant team will coordinate with outside agencies that provide services and/or expertise within the City of Nashua including but not limited to non-profits, business groups, engineers, surveyors, attorneys, and other design professionals.

c) Engagement with the Community
   i) The selected consultant team will conduct general outreach for the Code, creating and updating a project website, leading three public meetings, soliciting feedback and conducting technical analysis with subsequent recommendations for the Code update.
   ii) The selected consultant team will present to the Planning Board and Board of Aldermen as part of the Code adoption process.

4) ***Code Drafting***

a) The new code should include the following:
   i) Overview, including definitions, principles, intent, and an explanation of the regulations and land use permitting process in clear and concise language.
   ii) Zoning Map delineating district boundaries, the location of streets, public spaces, natural amenities, and other special features. Mapping will be completed by City Staff with design input from the consultant team.
   iii) Building Types & Lot Standards governing basic building form, placement, and fundamental elements to ensure that buildings complement existing development and enhance the streetscape. Building standards should be based on existing building types as well as new building types that will add vitality to the streetscape, provide new housing choices, and new venues and amenities.
   iv) Frontage Types that are context sensitive and minimize the need for zoning relief.
   v) Use Regulations that simplify use categories for all districts, and minimize the emphasis on use for form-based districts
   vi) Public Realm and Streetscape Standards that define the types of spaces appropriate for various districts and locations, and promote walkable spaces in close proximity to residences and workplaces.
   vii) Parking & Access Standards that are context sensitive, encourage alternative forms of transportation, and discourage vehicular oriented development.
   viii) Landscape Standards that are context sensitive, enhance commercial development outcomes, reduce the need for buffers, and integrate green infrastructure design principles for MS4 compliance.
   ix) Special Standards as needed to address aesthetic or nuisance related concerns, such as loading, trash areas, noise, light, or life/safety issues.

This process is anticipated to be funded over two fiscal years (July-June), with a total budget of $225,000. Funding has been allocated by the Board of Aldermen.

Project Timeline

The following schedule identifies the project timeline. The schedule is subject to modification as circumstances dictate or as determined necessary by or in the best interests of the City.

Solicitation Schedule	Dates
Announcement of Successful Consultant Team	No later than 2 weeks after interviews*
Contract Negotiations Commencement	No later than 1 week after announcement*
Contract Approval	March 14th, 2023*
Contract Commencement	April 3rd, 2023*
Final Draft Presented to the Board of Aldermen	August 8th, 2024*

** Tentative dates. A second round of interviews may be required which would extend the overall schedule 2-3 weeks.*

The City reserves the right to modify this schedule at its sole discretion. Notification of changes in the response due date will be posted on the City website or as otherwise stated herein. All times and dates are Eastern Standard Time. Proposers are expected to fully utilize the City's website as a primary source of information before contacting the City with questions.

Submission Guidelines & Requirements

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate both the Proposers understanding of the City's requirements and their approach to providing the products and/or services.

Only information that is essential should be submitted. There is no page limit, however it is noted that relevance and brevity shall be considered during the evaluation of the submittals. Concise, legible, and clearly stated information is preferred and will be used in the evaluation process.

All proposals shall include and address the following items in the order listed below, at a minimum:

1) **Cover Letter and Executive Summary**
   - Cover letter should clearly indicate the name of the consultant team proposing.
   - Include an Executive Summary that briefly describes the proposer's approach to meeting the City's requirements as outlined in the RFP, indicates any major requirements that cannot be met, and highlights why this project is of interest to the consultant team.
   - Provide a brief consultant team overview outlining your consultant team's history, structure and capabilities

2) **Project Team and Staffing**
   - Provide an organizational chart and brief narrative describing the role of each project team member assigned to the project. This should include an estimate of the percentage of work that each team member will contribute over the course of the project.
   - Provide resumes for all personnel who will have major project responsibilities. Resumes shall demonstrate experience and background appropriate for each individual's assigned responsibilities.
   - The City reserves the right to approve or disapprove of the proposed staff for this project. The proposed team and staff assignments shall remain consistent throughout the project. If substitutions are proposed, they must be presented to the City in writing for review and acceptance.

3) **Related Project Experience**
   - Describe experience working with municipalities to develop land use codes within the last five years. For each project client include a contact name, phone number, and e-mail address.
   - Provide three references who are familiar with the proposer's relevant experience and expertise.

4) **Project Understanding**
   - Describe the proposer's general approach and philosophy to land use code projects. What is a typical sequence of work for a project of this nature? What are the typical milestones, key dates, and number of meetings?
   - Recommended list of items you plan on delivering with a list of additional alternative options.
   - Describe the communication methods that your company will use to ensure project expectations are met.
   - Explain what distinguishes the company from others in the field and what makes the company a good candidate to work with the City.

5) **Project Approach and Proposed Innovations**

- The project approach will be described in sufficient detail to demonstrate knowledge of the steps needed to successfully complete the project.
- The proposer may also suggest technical or procedural innovations that have been used successfully on other engagements and which may provide the City with better service delivery. Discuss any ideas, innovative approaches, or specific new concepts included in the proposal that would provide benefit to the City.

6) **Compensation**
   - Provide the basis of proposed compensation structure for proposer's work. No fee proposals are to be submitted with the qualifications but a brief narrative on the manner in which you would arrive at a fee for the work is required. Include the following information at a minimum:
     - Proposed overall fee structure (i.e. lump sum, percent of by phase, not-to-exceed)
     - Hourly rates of all individuals identified on your organization chart and all others needed to complete scope of work.
     - Scheduling timelines and number of meetings anticipated during each phase
     - Provide a breakdown (i.e. percent of relative fee) and explanation for all proposed expenses. This includes all administration services and other hard or soft costs for the project.
     - Any costs incurred by the agency in preparation or submittal of the RFP are the company's sole responsibility. All responses, inquiries, or correspondence relative to or in reference to this RFP, and all other reports and documentation submitted by the agency will become the property of the City of Nashua.

The City will perform a preliminary evaluation to determine whether each Proposal is responsive to this RFP immediately after receiving the proposals. Upon receipt of qualified submissions, the City of Nashua's selection committee will review the responses based on the following criteria:

- The professional and ethical reputation of the consulting team.
- The consulting team's demonstrated qualifications and expertise in performing the services required.
- The qualifications and experience of the staff that will oversee the project.
- The extent to which the services offered most closely match the City's needs.
- The past record of performance with projects with respect to quality of work, control of costs, and ability to meet schedules.
- References from past clients.

The selection committee may invite proposers to interview with the committee. If an interview process is chosen, participants in the interview process will be rated and the top rated consultant team will be asked to prepare a detailed Scope of Work and a Cost Proposal, as the second step in the selection process. It is expected that the top rated consultant team will prepare these items in a timely manner and be responsive in addressing subsequent questions and comments.

Non-Discrimination

The City hereby notifies all proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.

Contract Negotiations

After selection but prior to contract award, the City reserves the unilateral right to negotiate any aspect of the proposal or proposed contract in any manner that best serves the needs of the City and is within the scope of the solicitation. Subject to successful negotiations and approval by the Board of Aldermen, a contract will be issued to the selected consultant team. Final contract negotiations will require the selected consultant team to proceed with the development of a Scope of Work and costs for all components of the project. If the consultant team fails to provide the necessary Scope of Work and cost information for negotiations in a timely manner, does not negotiate in good faith, or cannot perform the Contract for the Project, the City may terminate negotiations with that consultant team and commence negotiations with the next ranked consultant team.

The City may accept any proposal as submitted whether or not negotiations have been conducted between the parties.

Neither the commencement nor cessation of negotiations shall constitute rejection of the proposal or a counteroffer on the part of the City.

Award

The City intends to select the successful consultant team after a thorough evaluation of all the proposals submitted. The City reserves the right to negotiate with the successful consultant team or elect not to select any response.

The Contract will be awarded to that consultant team whose proposal will be most advantageous to the City based on conformity to the RFP, reputation of the consultant team, and the other factors listed in this RFP. The award will be subject to approval by the City's Board of Aldermen. The City shall not be obligated to explain the results of the evaluation process to any consultant team.

General Requirements

1) The successful consultant team will be required to 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 issues the notice of award. The City requires thirty days written notice of cancellation or material change in coverage. The certificate 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, Employer's Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance:
    a) General Liability insurance in the amount of $1,000,000 per occurrence; $2,000,000 aggregate; $1,000,000 Professional Liability;
    b) $1,000,000 Combined Single Limit Automobile Liability; and
    c) Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, $100,000/$500,000/$100,000.
2) The Proposer shall meet all requirements of the Americans with Disabilities Act.
3) The Proposer should understand that under the New Hampshire Right-to-Know Law, all documents submitted in response to this RFP, including financial information, are considered public information and will be made available to the public upon request, unless specifically exempted under the law.

4) The City of Nashua may reject any and all responses on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim, or cause of action by any unsuccessful proposer against the City of Nashua.
5) The City of Nashua assumes no liability for the payment of costs and expenses incurred by any consultant team in responding to this RFP. All responses become sole property of the City of Nashua. This RFP is not a contract and shall not be interpreted as such but rather serves as an instrument through which proposals are solicited.

CONTRACT FOR PROFESSIONAL SERVICES

TITLE

A CONTRACT BETWEEN

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

and its successors, transferees and assignees (together "Professional Consultant")

NAME AND TITLE OF PROFESSIONAL CONSULTANT

ADDRESS OF PROFESSIONAL CONSULTANT

DRAFT

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

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

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

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

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

Exhibit A--General Conditions for Contracts
Exhibit B--Scope of Services, Contract Time, Fee Schedule

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

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

written change order or the fully executed City of Nashua Purchase Order shall control over the terms of the Proposal.

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

DESCRIPTION OF WORK:

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

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

_____**($)**_____

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

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

- Electronically via email to 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 Consultant agrees to provide the following with each request for payment:

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

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

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

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

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

CITY OF NASHUA REPRESENTATIVE: PROFESSIONAL CONSULTANT 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 Consultant may change the address or representative by giving written notice to the other party.

DRAFT

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

City of Nashua, NH (signature)	***(signature)***
James W. Donchess, Mayor	
(Printed Name and Title)	***(Printed Name and Title)***
Date	***Date***

DRAFT

EXHIBIT A
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General Terms and Conditions

1. **DEFINITIONS** Unless otherwise required by the context, "Professional Consultant", and its successors, transferees and assignees (together "Professional Consultant") includes any of the Professional Consultant's consultants, sub consultants, contractors, and subcontractors

2. **PROFESSIONAL CONSULTANT STATUS** The parties agree that Professional Consultant shall have the status of and shall perform all work under this contract as a Professional Consultant, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Professional Consultant, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Consultant's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Consultant is not a City of Nashua employee and that there shall be no:

   (1) Withholding of income taxes by the City of Nashua:
   (2) Industrial insurance coverage provided by the City of Nashua;
   (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
   (4) Participation or contributions by either the Professional Consultant or the City of Nashua to the public employee's retirement system;
   (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
   (6) Unemployment compensation coverage provided by the City of Nashua.

3. **STANDARD OF CARE** Professional Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Consultant warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Consultant to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Consultant shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Consultant's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Consultant shall not in any way relieve Professional Consultant of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Consultant's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Consultant shall be and remain liable in accordance with the terms of the contract and applicable law.

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

4. **CITY OF NASHUA REPRESENTATIVE** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Consultant, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.

5. **CHANGES TO SCOPE OF WORK** The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Consultant's performance under the contract. Professional Consultant shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Consultant should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Consultant's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Consultant for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Consultant of the change.

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

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

6. **CITY OF NASHUA COOPERATION** The City of Nashua agrees that its personnel will cooperate with Professional Consultant in the performance of its work under this contract

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

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

8. **TERMINATION OF CONTRACT**

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

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

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

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or subcontracts to the extent they

relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.

4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City of Nashua to resume performance.

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

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

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

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

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

must be submitted to the City of Nashua within 30 days of the effective date of the notice of termination.

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

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Consultant shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Consultant assigned to the performance of the contract.
Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Consultant's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Consultant's control.

9. **DISPUTE RESOLUTION** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Consultant Representative. At all times, Professional Consultant shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, if requested in writing by either the City of Nashua or the Professional Consultant within 14 days after the 30 days described above , the parties shall attempt to resolve the dispute by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties, which agreement shall not be unreasonably withheld. If the parties cannot agree to a mediator within 30 days or the dispute cannot be settled within a period of thirty (30) days with the mediator, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

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

Professional Consultant agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

11. **INSURANCE** Professional Consultant shall carry and maintain in effect during the performance of services under this contract:

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

Professional Consultant shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Consultant are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Consultant under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Consultant. Professional Consultant shall require Subcontractors to carry appropriate and lawful amounts of insurance for the services they are providing. Professional Consultant will ensure compliance with this section and shall receive valid certificates of insurance from all Subcontractors as proof that coverage is in place..

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

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

- Professional Consultant is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Consultant or anyone employed, directed, or supervised by Professional Consultant.

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

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

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

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

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

submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

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

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

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

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

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

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

18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Consultant shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and

provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

19. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Professional Consultant related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

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

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

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

    Professional Consultant expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third

party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City of Nashua or any of its officers or employees, in either their official or individual capacity of the City of Nashua, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Professional Consultant agrees to indemnify, to defend, and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Consultant infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Consultant infringes any patent.

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

22. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Consultant shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Consultant in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Consultant with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Consultant shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

23. **TAXES** Professional Consultant shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Consultant hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

24. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

25. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

26. **PROHIBITED INTERESTS** Professional Consultant shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or

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

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

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

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

27. **THIRD PARTY INTERESTS AND LIABILITIES** The City of Nashua and Professional Consultant, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Consultant.

28. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

29. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract

shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

30. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Consultant. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

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