



# State of New Hampshire

146 mac

DEPARTMENT OF ADMINISTRATIVE SERVICES  
25 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3201 | [Office@das.nh.gov](mailto:Office@das.nh.gov)

Charles M. Arlinghaus  
Commissioner

Catherine A. Keane  
Deputy Commissioner

Sheri L. Rockburn  
Assistant Commissioner

October 10, 2024

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

## REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a contract with K.J. Fisher and Sons LLC (VC# 165249), 95 Old Center Rd. Deerfield, New Hampshire 03307 for a total price not to exceed \$52,529 for paving services at Industrial Drive, Concord NH. (Bid Number 3-25) located on the Hugh Gallen Office Park. This contract is effective upon Governor and Council approval through December 1, 2024. **100% Capital Funds.**

Funding is available in account 19-146:1IIC1 - Concord Steam as follows:

	<u>FY 2025</u>
01-14-14-140030-71880000-034-500162-Capital Projects	\$52,529

## EXPLANATION

The Department of Administrative Services (DAS), through the Bureau of Purchase and Property (BoPP), issued request for bid 3-25 on August 6, 2024, with responses due on August 30, 2024. This bid reached 95 vendors through the NIGP registry with an additional 15 directly sourced. There was one compliant response from K.J. Fisher and Sons LLC.

Currently, there is not a statewide contract for paving services. The Project includes paving of a section of Industrial Drive. During the completion of the Concord Steam Phase II Project, drainage issues on Industrial Drive were discovered that were compromising the ground behind the remaining wall of the Concord Steam Plant. This wall supports Industrial Drive that runs behind Main Building located at 105 Pleasant Street, Concord New Hampshire. It was determined that a new catch basin with new drainage lines running down Industrial Drive would need to be installed to stop the destabilization of Industrial Drive. The drainage work was completed by Department of Administrative Services staff who worked with the Division of Public Works Design and Construction to determine the proper drainage. This area of paving at Industrial Drive had to be removed in order to install the needed drainage to repair past damage and prevent future damage.

The proposed contract with K.J. Fisher and Sons LLC includes all costs associated with completing the project in preparation for the upcoming winter season and beyond. K.J. Fisher and Sons LLC has been pre-qualified through the bid process conducted by BOPP.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
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Based on the foregoing, I am respectfully recommending approval of the contract with K.J. Fisher and Sons LLC.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Charles M. Arlinghaus', written in a cursive style.

Charles M. Arlinghaus  
Commissioner

FORM NUMBER P-37 (version 2/23/2023)

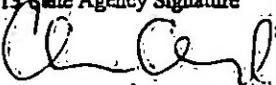
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address 25 Capitol Street Concord, NH 03301	
1.3 Contractor Name KJ Fisher & Sons		1.4 Contractor Address 95 Old Centre RD, Deerfield NH 03037	
1.5 Contractor Phone Number 603-294-4703	1.6 Account Unit and Class 030-014-014-141510- 71880000-500162	1.7 Completion Date 12/1/2024	1.8 Price Limitation \$52,529.00
1.9 Contracting Officer for State Agency Lyn Tripp		1.10 State Agency Telephone Number 603-271-7184	
1.11 Contractor Signature  Date: 9-16-2024		1.12 Name and Title of Contractor Signatory Click or tap here to enter text: Barbara A Fisher, Managing Member	
1.13 State Agency Signature  Date: 10-10-24		1.14 Name and Title of State Agency Signatory Charles M. Arlinghaus, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Duncan A. Edgar</i> On: October 29, 2024			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials: *BSF*  
Date: *9/16/24*

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of

whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7c or any other provision of law.

5.4 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

#### 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;  
8.1.2 failure to submit any report required hereunder; and/or  
8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

#### 9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

#### 10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files,

formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91A and/or other applicable law. Disclosure requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

#### 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved

to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

#### 19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. **THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. **FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

EXHIBIT "A"

SPECIAL PROVISIONS

1. No Special Provisions.

Contractor Initials BP  
Date 11/2/04

## **EXHIBIT "B"**

### **SCOPE OF SERVICES**

1. The Contractor shall provide "Installation Services" to install 270 X 13 of asphalt, 340 X 5 of Asphalt curbing, and 5 X 160 of Granite curbing. The site has been prepped and made ready for paving and curbing.
2. The term of this contract shall be from October 1, 2024 through December 1, 2024
3. The term "Installation Services", as used above shall include all supervision, labor, materials, transportation, tools, equipment, and machinery necessary for the successful completion of the "Installation Services" as described herein.
4. The area of work is behind Main building and above the old Concord Steam plant location on Industrial Drive . Concord, NH 03301. The Contractor shall complete the installation between October 1, 2024 through December 1, 2024.
5. All work performed shall be scheduled by the State Project Manager from the Department of Administrative Services.
6. All work shall be completed from 6:00 AM to 4:30 PM unless prior arrangements are made in advance with the State Project Manager.
7. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss.
8. The Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with the work. The Contractor shall provide the necessary equipment and comply with all City, State and or Federal safety regulations.
9. The Contractor shall provide adequate supervision of their employees to ensure complete and satisfactory performance of all work in accordance with the terms of the contract.
10. The Contractor shall supervise and direct the work, using their best skill and attention. The Contractor shall be solely responsible for all means, methods, techniques, sequences, and procedures and to coordinate all portions of the work.
11. The Contractor shall perform all the work and furnish all the materials, tools, equipment, and safety devices necessary to perform in the manner and within the time hereinafter specified. The Contractor shall complete the entire work to the satisfaction of the State and in accordance with the specifications herein mentioned, at the price herein agreed upon and fixed, therefore.
12. The Contractor shall adequately secure and protect their own tools, equipment, materials, and supplies. The State assumes no liability for any damage, theft, or negligent injury to the Contractor's property or to the property of their employees, agents or approved sub-contractors.
13. Contractor shall take all responsibility for the work under this contract; for the protection of the work; and for preventing injuries to persons and damage to property and utilities on or about

the work. They shall in no way be relieved of their responsibility by any right of the State to give permission or issue orders relating to any part of the work; or by any such permission given on orders issued or by failure of the State to give such permission or issue such orders. The Contractor shall bear all losses resulting to him or to the State on account of the amount or character of the work, or because of the nature of the area in or on which the work is done differed from what was estimated or expected, or account of the weather, elements, or other causes.

14. The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contracting Officer may require the Contractor to dismiss from the work such employees as deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.

15. The Contractor or their personnel shall not represent themselves as employees or agents of the State.

16. While on State property, employees shall be subject to the control of the State, but under no circumstances shall such persons be deemed to be employees of the State.

17. All work performed shall be scheduled with the Contracting Officer from the Department of Administrative Services.

18. The Contractor agrees that any damage or injury to buildings, materials, and equipment or to other property by the Contractor during the performance of this service shall be repaired at their own expense.

19. All Contractor correspondence and submittals shall be sent to:

- a) Lyn Tripp  
State of New Hampshire  
Department of Administrative Services  
107 Pleasant St Room 324  
Concord, NH 03301

## **EXHIBIT "C"**

### **PAYMENT TERMS**

1. The Contractor hereby agrees to provide ""Paving services and Curb instillation"" at Industrial Drive (behind Maing Building) in Concord, NH not to exceed a total of \$52,529.00 (herein after referred to as the contract price) in return for the services described in Exhibit "B".
2. Invoices shall be submitted after completion of work. Special charges, surcharges, processing charges, or fuel charges of any kind (by whatever name) may not be added on at any time.
3. Payments shall be paid in full within thirty (30) days after receipt of invoice and acceptance to the State's satisfaction. Payments will be made via ACH unless otherwise specified by the State.



Division of Procurement Support Services  
Bureau of Purchase Property

Gary S. Lunetta  
Director  
(603) 271-2201

Bid Summary

Bid Description	Paving Services at Industrial Drive	Agency	Central Facilities Bureau
Bid #	3-25	RQ #	Pending
Agent Name	Jonah Rosa	Bid Closing	9/12/2024 at 10:00 am

Indicates Award:

Product Description	KJ Fisher & Sons
Extended Cost:	
<b>Section 1: Paving &amp; Asphalt Curb</b>	
Labor cost of area preparation, paving (one side of drive approximately 270' x 13'), and asphalt curb installation (340' x 5")	\$25,364.00
Materials cost of area preparation, paving (one side of drive approximately 270' x 13'), and asphalt curb installation (340' x 5")	\$18,576.00
Section 1 Total:	\$43,940.00
<b>Section 2: Granite Curb</b>	
Labor cost of 5" x 160' granite curb installation	\$5,153.00
Material cost 5" x 160' granite curb installation	\$3,435.00
Section 2 Total:	\$8,588.00
<b>Total Project Cost:</b>	<b>\$52,528.00</b>

Recommendation Summary	
Number of Solicitations Received	1
Number of Sourced bidders	15
Number of NIGP Vendors Sourced	95
Number of non-responsive bidders	109
D&B Report Attached	No
Method of Payment (P-card/ACH)	ACH
FOB Delivered	Yes
Special Notes:	



**NEW HAMPSHIRE DEPARTMENT OF ADMINISTRATIVE SERVICES  
DIVISION OF PROCUREMENT AND SUPPORT SERVICES**

**REQUEST FOR BID FOR PAVING SERVICES AT INDUSTRIAL DRIVE**

**3-25**

**DUE DATE 8/30/2024 1:15 PM (EASTERN TIME)**

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1. **PURPOSE:**
  - 1.1. The purpose of this bid invitation is to establish a contract for paving services to the State of New Hampshire with services indicated in the SCOPE OF SERVICES and OFFER sections of this bid invitation, in accordance with the requirements of this bid invitation and any resulting contract.
2. **INSTRUCTIONS TO VENDOR:**
  - 2.1. Read the entire bid invitation prior to filling it out. Complete the pricing information in the "Offer" section (detailed information on how to fill out the pricing information can be found in the "Offer" section); complete the "Vendor Contact Information" section; and finally, fill out, and sign the bid transmittal letter.
3. **BID SUBMITTAL:**
  - 3.1. All bids shall be submitted on this form (or an exact copy), shall be typed, or clearly printed in ink, and shall be received on or before the date and time specified on paragraph 7 of this bid under "Bid Closing". Interested parties may submit a bid to the State of New Hampshire Bureau of Purchase and Property by email to **NH.Purchasing@DAS.NH.Gov**. All bids shall be clearly marked with bid number, date due and purchasing agent's name.
  - 3.2. IF YOU ARE EXPERIENCING DIFFICULTIES EMAILING YOUR BID OR YOU WISH TO VERIFY THAT YOUR BID RESPONSE HAS BEEN RECEIVED, PLEASE CALL (603) 271-2201.
4. **BID INQUIRIES:**
  - 4.1. Any questions, clarifications, and/or requested changes shall be submitted by an individual authorized to commit their organization to the Terms and Conditions of this bid and shall be received in writing at the Bureau of Purchase and Property no later than 4:00 PM on the date listed in the timeline below. Questions shall not be submitted to anyone other than the Purchasing Agent or his/her representative. Bidders that submit questions verbally or in writing to any other State entity or State personnel shall be found in violation of this part and may be found non-compliant.
  - 4.2. Questions shall be submitted by email to Jonah Rosa at **Jonah.L.Rosa@DAS.NH.Gov**.
  - 4.3. Submissions shall clearly identify the bid Number, the Vendor's name and address and the name of the person submitting the question.
5. **BID DUE DATE:**
  - 5.1. All bid submissions shall be received at the Bureau of Purchase and Property no later than the date and time shown on the transmittal letter of this bid. Submissions received after the date and time specified shall be marked as "Late" and shall not be considered in the evaluation process.
  - 5.2. All offers shall remain valid for a period of one hundred eighty (180) days from the bid due date. A vendor's disclosure or distribution of bids other than to DAS, Bureau of Purchase and Property may be grounds for disqualification.
6. **ADDENDA:**
  - 6.1. In the event it becomes necessary to add to or revise any part of this bid prior to the scheduled submittal date, the NH Bureau of Purchase and Property shall post on our web site any Addenda. Before your submission and periodically prior to the RFB closing, Vendors are required to check the site for any addenda or other materials that may have been issued affecting the bid. The web site address is: **<https://apps.das.nh.gov/bidscontracts/bids.aspx>**.
7. **TIMELINE:**
  - 7.1. The timeline below is provided as a general guideline and is subject to change. Unless stated otherwise, consider the dates below a "no later than" date.

Bid Solicitation distributed on or by:	8/6/2024
Last day for questions, clarifications, and/or requested changes to bid:	8/23/2024
States response to questions, clarifications, and/or requested changes to bid:	8/26/2024
Bid Closing (Eastern Time):	8/30/2024 1:15 PM

**8. TERMS OF SUBMISSION:**

- 8.1. All material received in response to this bid shall become the property of the State and shall not be returned to the Vendor. Regardless of the Vendors selected, the State reserves the right to use any information presented in a bid response. The content of each Vendor's bid shall become public information once a contract(s) has been awarded.
- 8.2. A responding bid that has been completed and signed by your representative shall constitute your company's acceptance of all State of New Hampshire terms and conditions and shall legally obligate your company to these terms and conditions.
- 8.3. A signed response further signifies that from the time the bid is published (bid solicitation date and time) until a contract is awarded, no bidder shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who shall select, evaluate, or award the RFB.
- 8.4. Furthermore, a signed response signifies that any terms and/or conditions that may be or have been submitted by the Vendor are specifically null and void and are not a part of this bid invitation or any awarded purchase order, even if said terms and/or conditions contain language to the contrary.
- 8.5. The form P-37 Contract attached hereto shall be part of this bid and the basis for the contract(s). The successful Vendor and the State, following notification, shall promptly execute this contract form, which is to be completed by incorporating the service requirements and price conditions established by the vendor's offer.
- 8.6. CHAPTER ADM 600 DIVISION OF PROCUREMENT AND SUPPORT SERVICES RULES APPLY TO AND ARE MADE A PART HEREOF.
- 8.7. Complete bids shall be filled out on the original documents and format that are a part of this bid invitation. Vendors may submit additional paperwork with pricing, but all pricing shall be on the documents provided with this bid invitation and in the State's format.

**9. CONTRACT TERM:**

- 9.1. The term of the contract shall commence on August 15, 2024, or upon approval of the Governor and Executive Council, whichever is later, through project completion.

**10. CONTRACT AWARD:**

- 10.1. The award shall be made to the Vendor(s) meeting the criteria established in this RFB and providing the lowest cost by section. The State reserves the right to reject any or all bids or any part thereof and add/delete items/locations to the contract. All award(s) shall be, in the form of a State of New Hampshire Contract(s).
- 10.2. The State of New Hampshire reserves the right to add or delete locations/equipment throughout the term of a resultant contract. For the addition of new locations or new equipment, a requesting agency through the Division of Procurement and Support Services shall submit a request for quote (RFQ) including a detailed scope of work to the successful contractor. Quotes shall be consistent with pricing and service requirements contained herein and no service shall be performed until documented acceptance by the State is received. Any addition of new locations/equipment which constitutes a material change or increase in the assigned price limitation shall be effective upon approval of a contract amendment. Changes which do not constitute material change in scope of service or increased contract price limitation shall be effective upon written approval of the requesting agency.
- 10.3. Successful Vendor shall not be allowed to require any other type of order, nor shall the successful Vendor be allowed to require the filling out or signing of any other document by State of New Hampshire personnel.

**11. NOTIFICATION AND AWARD OF CONTRACT(S):**

- 11.1. Bid results shall not be given by telephone. For Vendors wishing to attend the bid closing, the names of the vendors submitting responses and pricing shall be made public. Other specific response information shall not be given out. Bid results shall be made public after final approval of the contract(s).
- 11.2. Bid results may also be viewed on our website at <https://apps.das.nh.gov/bidscontracts/bids.aspx>.

11.3. For Vendors wishing to attend the bid closing: Names of the Vendors submitting responses and pricing shall be made public. In lieu of in person public bid openings the State shall conduct openings via electronic means until further notice.

**12. LIABILITY:**

12.1. The State shall not be held liable for any costs incurred by Vendors in the preparation of bids or for work performed prior to contract issuance.

**13. PUBLIC DISCLOSURE OF BID OR PROPOSAL SUBMISSIONS:**

13.1. Generally, the full contents of any proposal (including all materials submitted in connection with it, such as attachments, exhibits, addenda, and vendor presentations) become public information upon completion of final contract or purchase order negotiations with the selected vendor. Certain information concerning proposals, including but not limited to scoring, is generally available to the public even before this time, in accordance with the provisions of NH RSA 21-G:37.

13.2. Confidential, commercial, or financial information may be exempt from public disclosure under RSA 91-A:5, IV. Any and all information contained in or connected to a bid or proposal that a Bidder considers confidential shall be clearly designated in the following manner:

13.3. **If the Bidder considers any portion of a submission confidential, they shall provide a separate copy of the full and complete document, fully redacting those portions by blacking them out and shall note on the applicable page or pages of the document that the redacted portion or portions are “confidential.”** Use of any other term or method, such as stating that a document or portion thereof is “proprietary”, “not for public use”, or “for client’s use only”, is *not* acceptable. In addition to providing an additional fully redacted copy of the bid submission to the person listed as the point of contact on Page one (1) of this document, the identified information considered to be confidential must be accompanied by a separate letter stating the rationale for each item designated as confidential. In other words, the letter must specifically state why and under what legal authority each redaction has been made. Submissions which do not conform to these instructions by failing to include a redacted copy (if required), by failing to include a letter specifying the rationale for each redaction, by failing to designate redactions in the manner required by these instructions, or by including redactions which are contrary to these instructions or operative law may be rejected by the State as not conforming to the requirements of the bid or proposal. Marking or designating an entire proposal, attachment, or section as confidential shall neither be accepted nor honored by the State. Marking an entire bid, proposal, attachment, or full sections thereof confidential without taking into consideration the public’s right to know shall neither be accepted nor honored by the State.

13.4. Notwithstanding any provision of this request for submission to the contrary, proposed pricing shall be subject to public disclosure REGARDLESS of whether or not marked as confidential.

13.5. If a request is made to the State by any person or entity to view or receive copies of any portion of a proposal, the State will assess what information it believes is subject to release; notify the Bidder that the request has been made; indicate what, if any, portions of the proposal or related material shall be released; and notify the Bidder of the date it plans to release the materials. To halt the release of information by the State, a Bidder must initiate and provide to the State, prior to the date specified in the notice, a court action in the Superior Court of the State of New Hampshire, at its sole expense, seeking to enjoin the release of the requested information.

13.6. By submitting a proposal, Bidders acknowledge and agree that:

13.6.1. The State may disclose any and all portions of the proposal or related materials which are not marked as confidential and/or which have not been specifically explained in the letter to the person identified as the point of contact for this RFP;

13.6.2. The State is not obligated to comply with a Bidder’s designations regarding confidentiality and must conduct an independent analysis to assess the confidentiality of the information submitted in your proposal; and

13.6.3. The State may, unless otherwise prohibited by court order, release the information on the date specified in the notice described above without any liability to a Bidder.

**14. TERMINATION:**

14.1. The State of New Hampshire shall have the right to terminate any resultant contract at any time with a thirty (30) day written notice to the successful Vendor.

**15. VENDOR CERTIFICATIONS:**

15.1. All Vendors shall be duly registered as a vendor authorized to conduct business in the State of New Hampshire.

15.2. STATE OF NEW HAMPSHIRE VENDOR APPLICATION: To be eligible for a contract award, a Vendor must have a completed Vendor Application Package on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee): <https://DAS.NH.Gov/Purchasing>.

15.3. NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION: To be eligible for a contract award, a Vendor that is a corporation, limited liability company, or other limited liability business entity (this excludes sole proprietors and general partnerships) must be registered to conduct business in the State of New Hampshire AND in good standing with the NH Secretary of State. Please visit the following website to find out more about the requirements for registration with the NH Secretary of State: <https://sos.nh.gov/corporation-division/>.

15.4. CONFIDENTIALITY & CRIMINAL RECORD: If Applicable, any employee or approved subcontractor of the Vendor who will be accessing or working with records of the State of New Hampshire shall be required to sign a Confidentiality and Non-Disclosure Agreement and a Release of Criminal Record Authorization Form. These forms shall be returned to the designated State agency prior to commencing any work.

15.5. CERTIFICATE OF INSURANCE: Prior to being awarded a contract the Vendor shall be required to submit proof of comprehensive general liability insurance coverage prior to performing any services for the State. The coverage shall insure against all claims of bodily injury, death, or property damage in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall also include State of New Hampshire workers' compensation insurance to the extent required by RSA Chapter 281-A.

**16. BID PRICES:**

16.1. Bid prices shall remain firm for the entire contract period and shall be in US dollars and shall include delivery and all other costs required by this bid invitation. Special charges, surcharges (including credit card transaction fees), or fuel charges of any kind (by whatever name) may not be added on at any time. Any and all charges shall be built into your bid price at the time of the bid. Unless otherwise specified, prices shall be F.O.B. DESTINATION, (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

16.2. Per Administrative Rule 606.01(e) "if there is a discrepancy between the unit price and the extension price in a response to an RFP, RFB or RFQ, the unit price shall be binding upon the vendor".

16.3. Price decreases shall become effective immediately as they become effective to the general trade or the Vendor's best/preferred customer.

**17. AUDITS AND ACCOUNTING:**

17.1. The successful Vendor shall allow representatives of the State of New Hampshire to have complete access to all records for the purpose of determining compliance with the terms and conditions of this bid invitation and in determining the award and for monitoring any resulting contract.

**18. TERMS OF PAYMENT:**

18.1. Payment shall not be due until 30 days after the invoice has been received at the agency business office or all items have been delivered, inspected, and accepted by the agency, whichever is later.

18.2. Payments shall be made via ACH unless otherwise specified by the State of New Hampshire. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury/state-vendors/index.htm>. Eligible participants shall negotiate their own payment methods with the successful Vendor.

**19. VENDOR RESPONSIBILITY:**

- 19.1. The successful Vendor shall be solely responsible for meeting all terms and conditions specified in the bid, and any resulting contract.
- 19.2. All State of New Hampshire bid invitations and addenda to such bid invitations are advertised on our website at <https://apps.das.nh.gov/bidscontracts/bids.aspx>.
- 19.3. It is a prospective Vendor's responsibility to access our website to determine any bid invitation under which the Vendor desires to participate. It is also the Vendor's responsibility to access our website for any posted addenda.
- 19.4. The website is updated several times per day; it is the responsibility of the prospective Vendor to access the website frequently to ensure that no bidding opportunity or addendum is overlooked.
- 19.5. It is the prospective Vendor's responsibility to forward a signed copy of any addendum requiring the Vendor's signature to the Bureau of Purchase and Property with the bid response.
- 19.6. In preparation of a bid response, the prospective Vendor shall:
  - 19.6.1. Provide pricing information as indicated in the "Offer" section; and
  - 19.6.2. Provide all other information required for the bid response (if applicable); and
  - 19.6.3. Complete the "Vendor Contact Information" section; and
  - 19.6.4. Complete the company information on the "Transmittal Letter" page, and sign under penalty of unsworn falsification in the space provided on that page.
- 19.7. It is the responsibility of the Vendor to maintain any awarded contract and New Hampshire Vendor Registration with up to date contact information.
- 19.8. Contract specific contact information (Sales contact, Contractor contract manager, etc.) shall be sent to the State's Contracting Office listed in Box 1.9 of Form P-37.
- 19.9. Additionally, all updates i.e., telephone numbers, contact names, email addresses, W9, tax identification numbers are required to be current through a formal electronic submission to the Bureau of Purchase and Property at: <https://www.das.nh.gov/purchasing/vendorresources.aspx>.

**20. IF AWARDED A CONTRACT:**

- 20.1. The successful Vendor shall complete the following sections of Appendix A (Agreement State of New Hampshire Form #P-37):
  - Section 1.3 Contractor Name
  - Section 1.4 Contractor Address
  - Section 1.11 Contractor Signature
  - Section 1.12 Name & Title of Contractor Signatory (if Vendor is not a sole proprietor)
- 20.2. Provide certificate of insurance indicating the coverage amounts required by Section 14 of the Form Number P-37.
- 20.3. Provide proof of sufficient workers' compensation insurance coverage or evidence of exemption from RSA Chapter 81-A.
- 20.4. If the successful Vendor is a corporation, limited liability company, or other limited liability business entity, then provide a certificate of good standing issued by the NH Secretary of State or, for a newly incorporated, formed, or registered entity, a copy of the appropriate registration document certified by the NH Secretary of State.

**21. SPECIFICATIONS:**

- 21.1. Complete specifications required are detailed in the **SCOPE OF SERVICES** section of this bid invitation. In responding to the bid invitation, the prospective Vendor shall address all requirements for information as outlined herein.

**22. SITE VISITATION:**

22.1. Prior to bidding, it is each Vendor's responsibility to become thoroughly familiar with the sites of the intended service, to determine everything necessary to accomplish the services. Failure of the Vendor to make a site visit does not relieve the Vendor of responsibility to fully understand what is necessary to accomplish a successful and complete services. Coordinate site visits with Justin Horan at (603) 603-892-8145 or at [justin.e.horan@das.nh.gov](mailto:justin.e.horan@das.nh.gov).

**23. SCOPE OF SERVICES:**

- 23.1. Vendor shall supply all labor, tools, transportation, materials, equipment, and permits as necessary and required to perform services as described herein at Industrial Drive in Concord, NH.
- 23.2. Installation of 5" x 340' asphalt berm/curb using berm machine (dimensions are approximate). The Vendor shall prep the area appropriately prior to installation which may include but not be limited to saw cutting, excavating existing asphalt, adding gravel, fine grading, compacting, and paving with 2' of base. A Cape Cod berm will not be accepted.
- 23.3. Paving one side of drive 270' x 13' (dimensions are approximate). The Vendor shall prep the area appropriately prior to paving which may include but not be limited to fine grading, compacting, and paving with 2" of base. Pave with 1" of top.
- 23.4. 5" x 160' granite curb installation to match the existing.



23.5.

23.6. The State shall block access to this section of the roadway while construction is in progress. Access will be permitted to those needing to use the parking lot.

**24. ADDITIONAL REQUIREMENTS:**

- 24.1. Unless otherwise stated in the Scope of Services, all services performed under this Contract(s) shall be performed between the hours of 6:00 A.M. and 4:30 P.M. for State business days, unless other arrangements are made in advance with the State. Any deviation in work hours shall be pre-approved by the Contracting Officer. The State requires ten-day advance knowledge of said work schedules to provide security and access to respective work areas. No premium charges shall be paid for any off-hour work.
- 24.2. The Vendor shall not commence work until a conference is held with each agency, at which representatives of the Vendor and the State are present. The conference shall be arranged by the requesting agency (State).
- 24.3. The State shall require correction of defective work or damages to any part of a building or its appurtenances when caused by the Vendor's employees, equipment, or supplies. The Vendor shall replace in satisfactory condition all defective work and damages rendered thereby or any other damages incurred. Upon failure of the

Vendor to proceed promptly with the necessary corrections, the State may withhold any amount necessary to correct all defective work or damages from payments to the Vendor.

- 24.4. The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contracting Officer may require the Vendor to dismiss from the work such employees as deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.
- 24.5. The Vendor or their personnel shall not represent themselves as employees or agents of the State.
- 24.6. While on State property, employees shall be subject to the control of the State, but under no circumstances shall such persons be deemed to be employees of the State.
- 24.7. All personnel shall observe all regulations or special restrictions in effect at the State Agency.
- 24.8. The Vendor's personnel shall be allowed only in areas where services are being performed. The use of State telephones is prohibited.
- 24.9. If sub-contractors are to be utilized, please include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

**25. WARRANTY REQUIREMENTS:**

- 25.1. The successful Vendor shall be required to provide warranties on all service provided by the Vendor for a period of not less than one (1) year or the manufacturer's standard warranty period, whichever is greater, commencing on the date that the equipment is received, inspected, and accepted by the State of New Hampshire. The warranty shall cover 100% of repair or replacement costs, including all parts, shipping, labor, travel, lodging, and expenses.

**26. OBLIGATIONS AND LIABILITY OF THE VENDOR:**

- 26.1. The successful Vendor shall perform all work and furnish all materials, tools, equipment, and safety devices necessary to perform the requested services in the manner and within the time hereinafter specified. The Vendor shall provide said services to the satisfaction of the State and in accordance with the specifications and at the price set forth herein. All work to be performed and all equipment to be furnished pursuant to the Scope of Services included herein shall be performed and furnished in strict accordance with the specifications included herein, the terms of any contract awarded as a result of this solicitation, any associated contract drawings, and the directions of State representatives as may be given from time to time while the work is in progress.
- 26.2. The successful Vendor shall take full responsibility for the work to be performed pursuant to the Scope of Services included herein; for the protection of said work; and for preventing injuries to persons and damage to property and utilities on or about said work. The Vendor shall in no way be relieved of such responsibility by any authority of the State to give permission or issue orders relating to any part of the work, by any such permission given or orders issued, or by any failure of the State to give such permission or issue such orders. The successful Vendor shall bear all losses accruing to the Vendor as a result of the amount, quality, or character of the work required, or because the nature or characteristics of the work location is different from what the Vendor estimated or expected, or due to delays or other complications caused by the weather, elements, or other natural causes.
- 26.3. The successful Vendor agrees that any damage or injury to any buildings, materials, equipment, or other property resulting from the Vendor's performance of the requested services shall be repaired at the Vendor's own expense so that such buildings, materials, equipment, or other property are satisfactorily restored to their prior condition.

**27. NON-EXCLUSIVE CONTRACT:**

- 27.1. Any resulting Contract from this RFB will be a non-exclusive Contract. The State reserves the right, at its discretion, to retain other Contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal.

**28. DISASTER RECOVERY:**

- 28.1. Do you provide emergency preparedness plan to aid the State during an emergency or disaster recovery with specifics as to response time, availability of supplies and goods and services offered? **Yes or No** (circle one)
- 28.2. If yes, please include hard copy and/or link to website for further information. This information is not considered part of award criteria and is considered informational only.

**29. ENVIRONMENTALLY FRIENDLY PRODUCTS:**

- 29.1. In accordance with State of New Hampshire RSA 9-C, the Bureau of Purchase and Property has an obligation to put into practice the interdependent principles of waste reduction, recycling, and recycled products purchasing. Contractors should supply environmentally preferable materials that meet performance requirements wherever practical in the fulfillment of this regulation. Environmentally preferable products and services have characteristics that include, but are not limited to, the following:
  - 29.1.1. Energy or water efficient
  - 29.1.2. Reusable
  - 29.1.3. Recyclable
  - 29.1.4. Contains postconsumer recycled materials
  - 29.1.5. Produces fewer polluting byproducts or safety hazards during manufacture, use, or disposal
  - 29.1.6. Certified by an independent, third-party eco-label (e.g., Green Seal, EcoLogo, etc.)
- 29.2. Suppliers citing environmentally preferred product claims shall follow the Federal Trade Commission's Green Marketing Guidelines and provide proper certification or detailed information on environmental benefits, durability, and recyclable properties as an **attachment with their bid submission**.
- 29.3. Whenever possible, Contractors shall eliminate PVC or polystyrene due to environmental and human health concerns. Contractors must notify the State if a product contains mercury and/or PFAS.
- 29.4. To promote fuel efficiency and reduce greenhouse gases and air pollution, Contractors are encouraged to use a SmartWay Transport/Carrier Partner for the shipment or transport of products. A list of SmartWay Transport partners can be found here: <https://www.epa.gov/smartway/smartway-partner-list>.

**30. OFFER:**

- 30.1. Vendor hereby offers to perform the services to the State of New Hampshire as specified at the prices quoted below, in complete accordance with the general and detailed specifications included herewith. **Quotes in lieu of a completed offer sheet will not be accepted.**
- 30.2. The quantities indicated in the offer section of this bid invitation are an estimate only for the State of New Hampshire's annual requirements. These quantities are indicated for informational purposes only and shall not be considered minimum or guaranteed quantities, nor shall they be considered maximum quantities. These quantities do not include any eligible participant usage.

DESCRIPTION	EXTENDED PRICE
<b>Section 1: Paving &amp; Asphalt Curb</b>	
Labor cost of area preparation, paving (one side of drive approximately 270' x 13'), and asphalt curb installation (340' x 5")	\$ 25,364.00
Materials cost of area preparation, paving (one side of drive approximately 270' x 13'), and asphalt curb installation (340' x 5")	\$ 18,576.00
Section 1 Total:	\$43,941.00
<b>Section 2: Granite curb</b>	
Labor cost of 5" x 160' granite curb installation	\$ 5,153.00
Material cost 5" x 160' granite curb installation	\$ 3,435.00
Section 2 Total:	\$ 8,588.00
<b>TOTAL PROJECT COST:</b>	<b>\$ 52,529.00</b>



**APPENDIX A**

**SAMPLE FORM TO BE COMPLETED UPON AWARD**

**FORM NUMBER P-37 (version 2/23/2023)**

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  Date:		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  Date:		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.** 3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all

rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.** 7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

**8. EVENT OF DEFAULT/REMEDIES.** 8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

**9. TERMINATION.** 9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

**10. PROPERTY OWNERSHIP/DISCLOSURE.** 10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** 12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.** 14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**15. WORKERS' COMPENSATION.** 15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CHOICE OF LAW AND FORUM.** 19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any

other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. **THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. **FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

26. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.



*(Limited partnership, Limited liability professional partnership or LLC)*

**Certificate of Authority # 3**

**Limited Partnership or LLC Certification of Authority**

I, Barbara A Fisher, hereby certify that I am the sole Partner, Member or  
*(Name)*

Manager and the sole officer of K J Fisher & Sons, LLC a limited liability partnership  
*(Name of Partnership or LLC)*

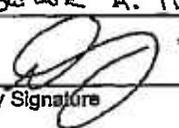
under RSA 304-B, a limited liability professional partnership under RSA 304-D, or a limited liability company under RSA 304-C.

I certify that I am authorized to bind the partnership or LLC. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person listed above currently occupies the position indicated and that they have full authority to bind the partnership or LLC and that this authorization shall remain valid for thirty (30) days from the date of this Corporate Resolution.

DATED: Sept 18, 2024

ATTEST: Barbara A Fisher, Manager  
*(Name & Title)*

State of New Hampshire, County of Rockingham. This document was signed before me on September 18, 2024 by Barbara A. Fisher

  
Notary Signature

Donald A Fisher  
NOTARY PUBLIC  
State of New Hampshire  
My Commission Expires 8/28/2027

My commission expires

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that K.J. FISHER AND SONS L.L.C. is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on March 18, 2004. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 469364

Certificate Number: 0006778919



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 18th day of September A.D. 2024.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan  
Secretary of State