



RESOLUTION

AUTHORIZING A LEASE AND OPERATING AGREEMENT WITH AVSG LP FOR A
COMPRESSED NATURAL GAS STATION ON A PORTION OF 9-11 RIVERSIDE
STREET

CITY OF NASHUA

In the Year Two Thousand and Eleven

BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a contract substantially similar to the attached Lease and Operating Agreement with AVSG LP for a compressed natural gas ("CNG") station on a portion of city-owned land at 9-11 Riverside Street.

Funding for the City's obligations under the Lease and Operating Agreement in the anticipated materials amount of \$6,100 shall come from Account #373-7002 "FY2010 DOE Energy Efficiency and Conservation Block Grant".

LEGISLATIVE YEAR 2011

RESOLUTION:

R-11-88

PURPOSE:

Authorizing a lease and operating agreement with AVSG LP for a compressed natural gas station on a portion of 9-11 Riverside Street

ENDORSER(S):

Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

From a revenue perspective, this Lease and Operating Agreement provides for monthly rental payments from the lessee as determined by the fee schedule contained in the Agreement. The calculation of the rental fee is based upon the CNG station's diesel gallon equivalent (DGE) sales in each month. In addition, there is also the opportunity for the City to receive royalty payments from the lessee for DGE sales to persons other than the city of Nashua.

From a cost perspective, the City has estimated that the cost to prepare the site for the CNG station will be approximately \$6,100. The City will also pay a price per DGE to the lessee at a rate of \$2.30 for the first two years of the lease and \$2.27 for the third year of the agreement. The DGE rate will be negotiated for year four and subsequent years and will be based upon the average regional price of CNG in New England at that time. For illustrative purposes, the City of Nashua most recently paid \$2.88 per gallon of diesel fuel.

ANALYSIS

This resolution authorizes the Mayor to enter into a Lease and Operating Agreement to lease a portion of the city-owned land at 9-11 Riverside Street to AVSG LP to operate a public access compressed natural gas station.

**Approved as to account
structure, numbers,
and amount:**

Financial Services Division

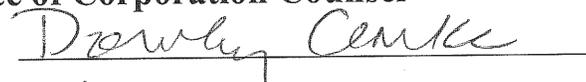
By:



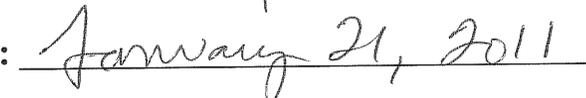
Approved as to form:

Office of Corporation Counsel

By:



Date:



LEASE AND OPERATING AGREEMENT

1. PARTIES:

This lease and operating agreement is made this day of February, 2011, by and between the City of Nashua, a New Hampshire municipal corporation, with its principal office at City Hall, 229 Main Street, Nashua, New Hampshire 03060 (the City) and AVSG LP, a Massachusetts Limited Partnership duly organized under the laws of the Commonwealth of Massachusetts, with its principal office at C-6 Shipway Place, Boston, MA 02129 (LESSEE).

2. PREMISES:

The City leases to the LESSEE and LESSEE leases from the City part of a parcel of land located at 9-11 Riverside Street, Nashua, NH as shown on the drawing hereto attached as Exhibit A including the land in and around the City's Transit maintenance garage. The City and LESSEE acknowledge and agree that the LESSEE intends to and will design, build, own and operate a public access CNG station, pursuant to the terms of this lease. The site will only be used for purposes reasonably related to the operation of a CNG station.

3. RECITALS:

- A. The City is a municipality with an existing facility and adjacent property located at 9-11 Riverside Street, Nashua, New Hampshire.
- B. LESSEE is a non-regulated limited partnership and developer of retail compressed natural gas (CNG) fueling facilities throughout New England.
- C. The City and LESSEE (collectively known as the "PARTIES") propose to develop a program for the distribution of CNG at a full public-access CNG fuel station within the City of Nashua, New Hampshire.
- D. AVSG will design, build, own, operate and maintain a CNG station pursuant to this agreement and supply CNG to the City and other public entities at the price listed in this agreement.
- E. The station must be completed by June 18, 2011.
- F. AVSG will provide comprehensive training on the operation of the CNG facility to City personnel as determined by the City.

4. PREMISES SITE IMPROVEMENTS AND CONSTRUCTION OF FACILITY:

The City shall make agreed-upon site improvements to the land. The site improvements include the preparation and clearing of the land. Paving will be the responsibility of the LESSEE. These site improvements shall meet the written

specifications of the LESSEE as illustrated in Exhibit B. The City shall be responsible for all permitting, material, and labor costs associated with said site improvements. The LESSEE shall design and build the CNG station. The LESSEE shall be responsible for all design, permitting, material, and labor costs associated with constructing said CNG station. The LESSEE is responsible for obtaining all necessary permits to construct the CNG station, including but not limited to, planning board approval.

5. TERM:

This Lease will commence on XXXXXXXXXX and remain in effect through XXXXXXXX (the "Initial term" of ten (10) years). This Lease shall be renewable for an additional five (5) years at the option of the City. Upon termination of this Lease, the CNG fuel station facility, and all its components, including any alterations and additions, shall become the property of the City.

6. RENT:

The LESSEE shall pay to the City rent payments, due on the first day of each month, based upon the following schedule:

Lease payment of \$500 per month for CNG station's sales up to 5,000 diesel gallon equivalents (DGE's) per month.

Lease payment of \$750 per month for CNG station's sales between 5,000 and 7,500 diesel gallon equivalents (DGE's) per month.

Lease payment of \$1,000 per month once the CNG station's sales exceed 7,500 diesel gallon equivalents (DGE's) per month and remain at \$1,000 per month for the remainder of the lease.

7. ROYALTY PAYMENTS:

The LESSEE shall pay to the City royalty payments, for each diesel gallon equivalent (DGE) sold from the station to persons other than the City of Nashua, based upon the following schedule:

Royalty payment of \$0.02 per diesel gallon equivalent (DGE) for CNG station's sales up to 5,000 diesel gallon equivalents (DGE's) per month .

Royalty payment of \$0.04 per diesel gallon equivalent (DGE) for CNG station's sales between 5,000 and 7,500 diesel gallon equivalents (DGE's) per month.

Royalty payment of \$0.05 per diesel gallon equivalent (DGE) once the CNG station's monthly sales exceed 7,500 diesel gallon equivalents (DGE's) per month and remain at \$0.05 per diesel gallon equivalent (DGE) per month for the remainder of the lease.

8. ALTERATIONS AND ADDITIONS:

The LESSEE shall not make any improvements or alterations to the leased premises, without on each occasion, obtaining the prior written consent of the City, such consent to be not unreasonably withheld or delayed, and then only pursuant to plans and specifications approved by the City in advance of each instance. The LESSEE also further agrees that it shall not permit liens to attach or remain upon the leased premises for labor or material furnished in connection with said alterations.

9. POSTED AND INVOICED PRICE OF CNG:

The LESSEE will post on each dispenser the price of CNG per DGE. This price is set at the discretion of the LESSEE. The LESSEE will invoice the CITY at a rate of \$2.30 per DGE for the first two (2) years of the initial term of the Lease. The rate will decrease to \$2.27 per DGE in the third year of the initial term of the Lease. During year 3, the City and LESSEE agree to negotiate, in good faith, the future price of CNG for the fourth year as well as subsequent years. The future price will be based upon the average regional price of CNG in New England at that time.

10. UTILITIES:

The LESSEE shall arrange and pay for all utilities including, but not limited to, natural gas, electricity, and communications. In the event LESSEE requires any additional utilities or related equipment, the installation and maintenance thereof shall be the LESSEE's sole obligation, provided that such installation shall be subject to the prior written consent of the LESSOR.

11. USE OF LEASED PREMISES:

The LESSEE shall use the leased premises only for the purpose of operating and maintaining a CNG fuel station. All of LESSEE's personnel working at the CNG fuel station on the premises shall be trained in CNG station operation and maintenance.

12. MARKETING AND PROGRAM SUPPORT:

The LESSEE shall market to and obtain commitment from potential CNG customers in the area of the CNG fuel station. The PARTIES shall cooperate in joint marketing efforts and activities as mutually agreed upon for the recruitment of such customers.

13. HOURS OF OPERATION:

The LESSEE shall devote its best efforts to keep the CNG fuel station open and operational for the dispensing of CNG for twenty-four (24 hours) each day, seven (7) days a week, three-hundred sixty-five (365) days per year. The CNG fuel station shall be illuminated between dusk to dawn throughout the calendar year.

14. SNOW REMOVAL:

The City shall provide, at no cost to the LESSEE, snow removal services on an as-needed basis. LESSOR shall also provide sand and/or salt applications to insure that the CNG station fuel island lanes are safe for passage of vehicles and drivers.

15. MAINTENANCE:

The LESSEE agrees to maintain the leased premises in good condition. The LESSEE shall not permit the leased premises to be overloaded, damaged, stripped, defaced, nor to suffer any waste. LESSEE shall obtain written consent of the City as well as applicable permits before erecting any sign on the premises. LESSEE shall respond to unanticipated/unscheduled CNG fuel station shutdowns within a four (4) hour timeframe.

16. PREMISES SUBLEASING:

The LESSEE shall not assign or sublet the whole, or any part of, the leased premises without the City's prior written consent. Notwithstanding such consent, LESSEE shall remain liable to the City for the payment of rent, royalties, and the full performance of the covenants and conditions of this Lease.

17. CITY'S ACCESS:

In addition to the City entering the premises to use the CNG station at any time, the City and the City's authorized representatives shall also have the right to enter the premises at all times for any of the following purposes:

- A. To determine whether the premises are in good condition and whether the LESSEE is complying with its obligations under this agreement.
- B. To do any necessary emergency maintenance or to make any restoration to the premises.
- C. Upon at least twenty-four (24) hours notice, to show the premises to any interested parties.

18. COMPLIANCE WITH LAWS:

The LESSEE shall pay for, at its sole cost and expense, and maintain during the term, and any extension thereof, all applicable permits, licenses, approvals, tariffs, tolls, and fees and shall comply with all laws, ordinances, rules, standards, orders and/or regulations of any government entity or agency in conjunction with the performance of this lease. The City assumes no liability or responsibility whatsoever with respect to LESSEE'S operations at the premises or the facility.

19. INSURANCE AND INDEMNIFICATION:

The LESSEE shall carry and remain in effect of the term of this Lease the following insurance coverages:

- General Liability insurance in the amount of \$2,000,000 per occurrence; \$4,000,000 aggregate;
- \$1,000,000 Combined Single Limit Automobile Liability;
- Workers' Compensation Coverage in compliance with the State of New Hampshire Statutes, \$100,000/\$500,000/\$100,000
- Owner's Protective Liability Insurance \$2,000,000/\$5,000,000;
- Environmental Liability to include sudden and gradual coverage for third-party liability including defense costs and completed operations in the amount of not less than \$1,000,000.

LESSEE shall maintain in effect at all times during the performance under this Lease all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by LESSEE are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease. The LESSOR shall not maintain any insurance on behalf of LESSEE. Sub-contractors are subject to the same insurance requirements as LESSEE.

The PARTIES agree that LESSEE shall have the status of and shall perform all work under this Lease as an independent LESSEE, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this Lease is between the PARTIES, and nothing in this contract shall create any contractual relationship between the PARTIES' consultants, sub consultants, contractors, or subcontractors. The PARTIES also agree that LESSEE is not a City employee and that there shall be no:

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

LESSEE shall provide the City with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the Lease within ten calendar days after the City issues the notice of award. The City requires thirty (30) 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. Certificates must name the City as an additional insured. The City is responsible for filing updated certificates of insurance with the City's Risk Management Department during the term of the Lease.

- All deductibles and self-insured retentions shall be fully disclosed in the certificates of insurance.
- All aggregates must be fully disclosed on the required certifications.
- The specified insurance requirements do not relieve LESSEE of its responsibilities or limit the amount of its liability to the City or other persons, and LESSEE is encouraged to purchase such additional insurance, as it deems necessary.
- LESSEE is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by LESSEE or anyone employed, directed, or supervised by Lessee.

Regardless of any coverage provided by any insurance, LESSEE agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, proceedings, arbitrations, claims, demands, damages, 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 LESSEE or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Lease. LESSEE's indemnity, defense 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.

20. DAMAGE AND VANDALISM BY THIRD PARTIES:

LESSEE will promptly notify the City of damage to the CNG fuel station facility due to acts of God or vandalism by third parties. LESSEE will undertake any necessary repairs or emergency work as soon as possible. The Lessee will be responsible for all costs and expenses associated with any repairs or other work to restore the CNG fuel station facility as a result of such damage to the extent not covered by insurance proceeds.

21. TERMINATION

The term and this lease shall immediately terminate without further notice upon the occurrence of any of the following events (Termination Events):

- A. The LESSEE breaches any of its obligations under this lease and fails to cure such breach with thirty (30) days after the City delivers written notice of such breach to the LESSEE, except in the case of the LESSEE's failure to maintain insurance as required in Section 19 hereof, termination shall be immediate upon expiration of insurance. However, if the City chooses to pay any unpaid or overdue insurance costs, the LESSEE shall have ten (10) business days to repay those costs and reactivate this lease.
- B. The LESSEE commences a voluntary case under federal bankruptcy laws, or shall apply for, consent to or acquiesce in the appointment of, or taking

possession by, a trustee, receiver, custodian or similar official or agent for itself or any substantial part of its property.

- C. A trustee, receiver, custodian or similar official or agent is appointed by an outside party for the LESSEE or any substantial part of its property.
- D. The LESSEE is the subject of an involuntary case brought pursuant to the federal bankruptcy laws, or a petition or action seeking LESSEE's reorganization, readjustment, arrangement, composition, dissolution, or other similar relief, whether under federal or state law, is brought against it and remains undismissed for a period of sixty (60) days.
- E. Any purported lien or attachment against the premises or LESSEE's property therein, is claimed, filed, recorded or asserted and the same is not fully released, discharged or abated within a period of ninety (90) days.
- F. LESSEE attempts to assign or purportedly assigns this lease without the City's prior written consent.

LESSEE hereby warrants that none of the foregoing termination events is occurring or has occurred as of the date of inception of this lease. Further, LESSEE shall pay City all costs and expenses incurred by the City in connection with the termination of the lease and the eviction of the LESSEE.

22. NOTICE:

Correspondence and/or other communications regarding the Lease shall be addressed to the following individuals, postpaid by registered or certified mail or via email, return receipt requested to:

TO THE CITY:

Mayor Donnalee Lozeau
Office of the Mayor
City of Nashua
City Hall
229 Main Street
Nashua, NH 03061

EMAIL: lozeaud@nashuanh.gov
TEL: (603) 589-3260

TO THE LESSEE:

Michael P. Manning
Director
AVSG LP
C-6 Shipway Place
Boston, MA 02129

EMAIL: mm@avsglp.com
TEL: (617) 242-8755, x14

23. SURRENDER:

At the end of the lease term or upon a termination under Section 21, the LESSEE shall vacate the premises and leave the improvements as is to the City. LESSEE shall deliver to the City all keys, locks, and other items of effects associated with the CNG fuel station.

24. ENTIRE AGREEMENT:

This Lease agreement supersedes, terminates, and merges all prior, collateral, contemporaneous agreements, written or oral, between the PARTIES, relating to the subject matter hereof.

25. GENERAL:

Section headings are for convenience and reference only, and may not be construed to explain, amplify, or modify the provisions of this Lease agreement.

No promises, agreements, representations, or warranties shall be binding upon either PARTY unless the same is evidenced by a signed writing and made part of the Lease agreement.

Any consent, express or implied, by the City to any breach by LESSEE of any term or condition of this lease shall not constitute a waiver by the City of any prior or succeeding breach by LESSEE of the same or any other term or condition of this lease. Acceptance by the City of rent or other payment with knowledge of a breach or of default under any term hereof by LESSEE shall not constitute a waiver by the City of such breach or default.

This lease agreement shall be governed exclusively by the laws of the State of New Hampshire and any litigation shall be brought in a court located in the State of New Hampshire.

IN WITNESS WHEREOF, the said PARTIES hereunto set their hands and seals this

_____ day of _____, _____.

**LESSEE:
AVSG LP**

**LESSOR:
CITY OF NASHUA, NEW HAMPSHIRE**

BY:

BY: Donnalee Lozeau, Mayor

TITLE :

EXHIBIT A

The leased area is inside the rectangle located behind the DPW and Transit buildings.

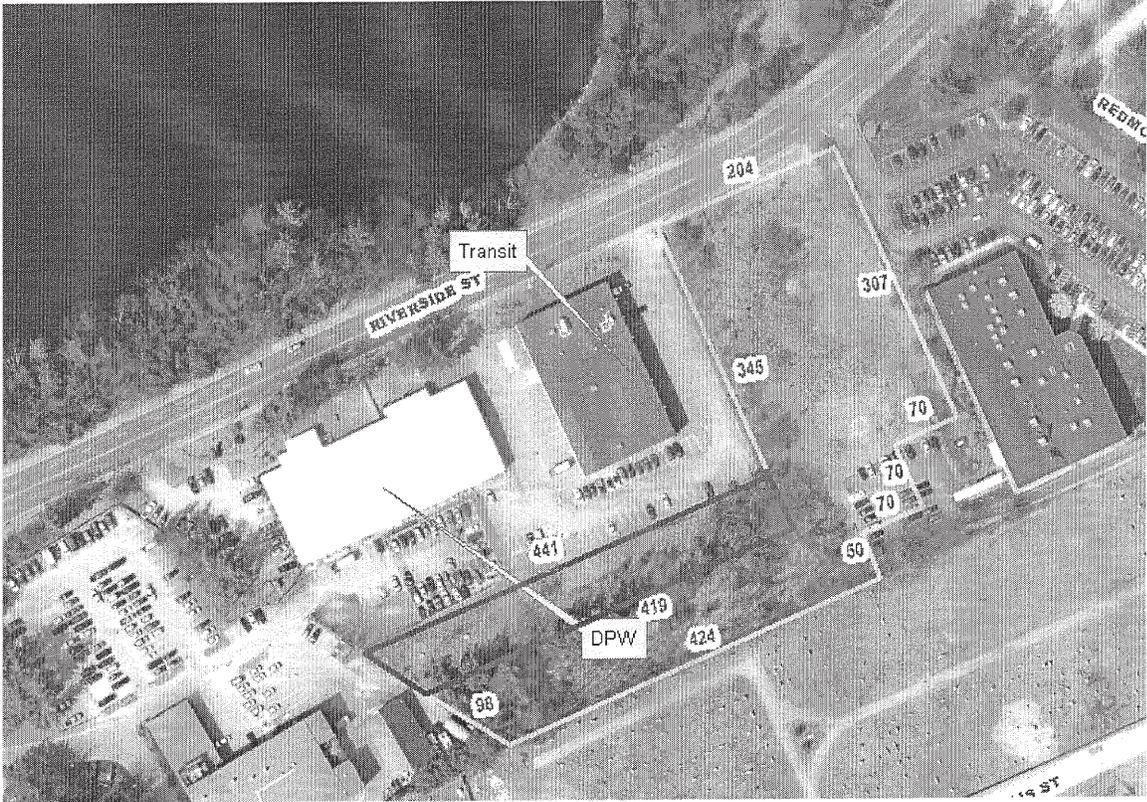
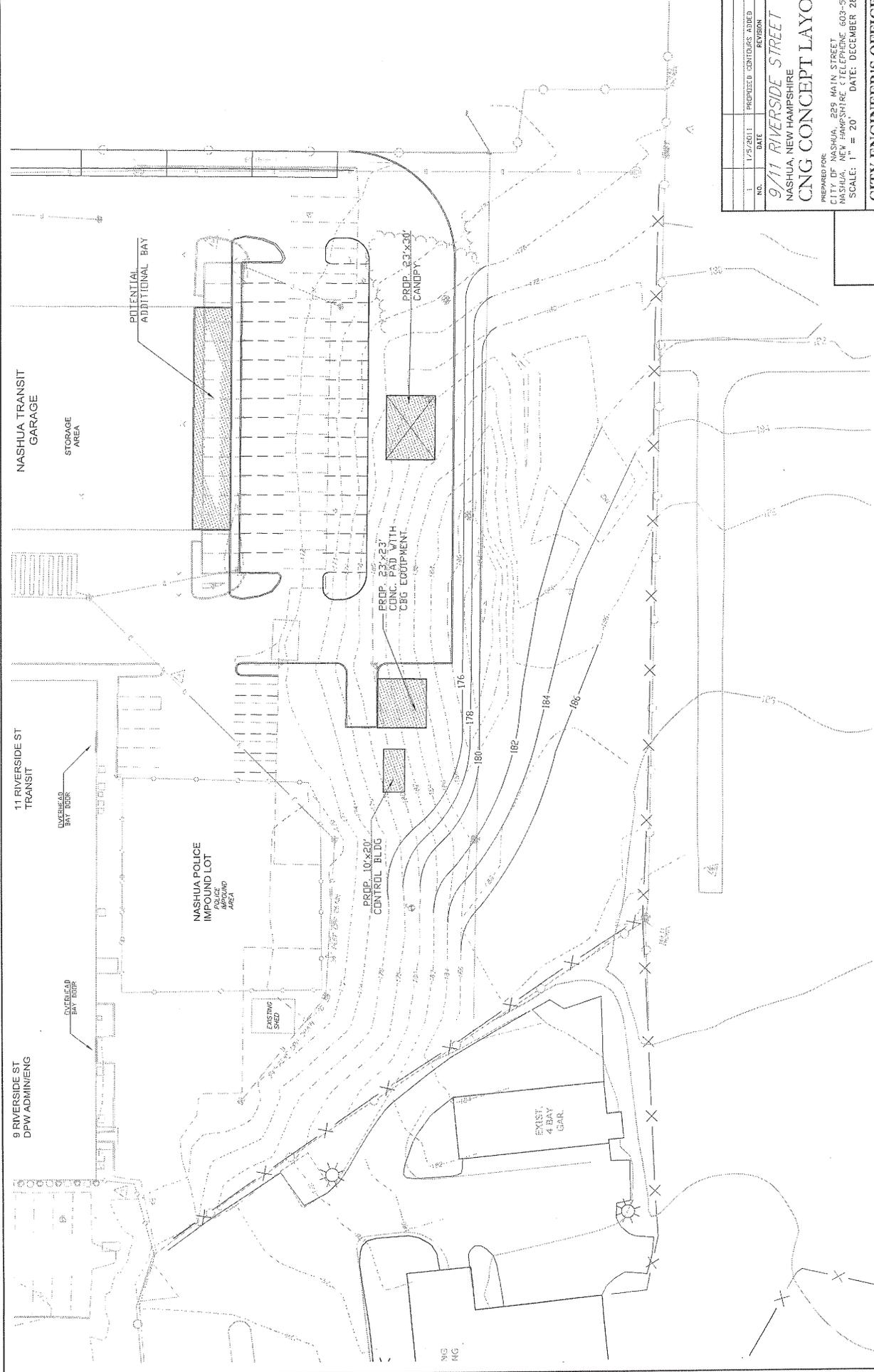


EXHIBIT B



| NO. | DATE | PROPOSED CONTOURS ADDED | A.K.A. |
|-----|----------|-------------------------|--------|
| 1 | 1/5/2011 | | |

| REVISION | |
|--|----------|
| 9/11 RIVERSIDE STREET | |
| NASHUA, NEW HAMPSHIRE | |
| CNG CONCEPT LAYOUT | |
| PREPARED FOR: DR. JAMES W. 255 MAIN STREET, NASHUA, NEW HAMPSHIRE TELEPHONE 603-589-3040 | |
| SCALE: 1" = 20' DATE: DECEMBER 28, 2010 | |
| CITY ENGINEER'S OFFICE | |
| A. J. K. | 10/27/10 |

