

CITY CLERK'S OFFICE  
CITY COUNCIL REFERRAL SLIP

TO: Community Development

DATE: March 14, 2017

The attached document was received for City Council consideration.

The following action is required:

- Prepare a report together with related documents, if applicable, such as an ordinance, a resolution or an agreement and submit to the City Clerk's Office for inclusion in the City Council's \_\_\_\_\_ agenda.
- You are the only department or committee this communication was referred to.
- Along with your department, this item was referred to the following departments:

\_\_\_\_\_  
\_\_\_\_\_

Please feel free to contact the City Clerk's Office if you have any questions.



ARI B. POLLACK

214 N. Main Street  
Concord, NH 03301

Direct Dial: (603) 545-3630  
General: (603) 228-1181  
Fax: (603) 228-8396  
pollack@gcglaw.com

February 20, 2017

Mayor Jim Bouley and City Councilors  
City of Concord Clerk's Office  
41 Green Street  
Concord, New Hampshire 03301



**Re: Proposed Discontinuance of a Portion of Pitman Street**

Dear Mayor Bouley and Councilors:

This firm represents Merrimack County regarding its construction of a new Superior Courthouse ("the Project") upon property located at 163 N. Main Street, Concord, New Hampshire ("the Property"). Following the County's construction of the Project, the Project and the Property will be sold to the State of New Hampshire for its perpetual operation and maintenance of the Courthouse. To achieve the State's minimum required parking, the County hereby proposes the discontinuance of a portion of the Pitman Street right-of-way to allow for the development of a new parking area upon the southerly side of the Property.

The discontinuance of a portion of Pitman Street ROW will not disrupt the public's usage of the existing travelled way. Instead, approximately 3,397 SF of easement will revert to Merrimack County and approximately 2,013 SF of easement will revert to Nash Family Investment Properties and Five N Associates (collectively, "Nash"), as the same is depicted upon the attached plan entitled "Proposed Discontinuance of a Portion of Pitman Street", prepared for Merrimack County by Richard D. Bartlett & Associates, LLC dated Nov. 10, 2016 (Exhibit A).

Upon approval of the proposed discontinuance of the right-of-way, Nash has agreed to convey fee ownership of its discontinued portion of Pitman Street to the County for adjustment into and inclusion with the Property. A redacted draft of the County's Purchase and Sale Agreement to accomplish with Nash this conveyance is attached hereto (Exhibit B). A companion application for re-subdivision of the Nash parcel, which will allow for the independent sale of the Nash portion of the discontinuance to be transferred to the County, is pending before the Planning Board.

Lastly, a formal Petition requesting partial discontinuance, and including the County's and Nash's release of potential damages in favor of the City, will be provided in the form attached hereto as Exhibit C.

Merrimack County understands that this matter will be presented to the City Council for action at its March 13, 2017 meeting, at which time representatives of the County will be

Mayor Jim Bouley and City Councilors  
February 20, 2017  
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prepared to present this matter and respond to the Council's questions. Thank you for your consideration.

Very truly yours,



Ari B. Pollack

ABP/red  
Enclosures

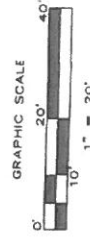
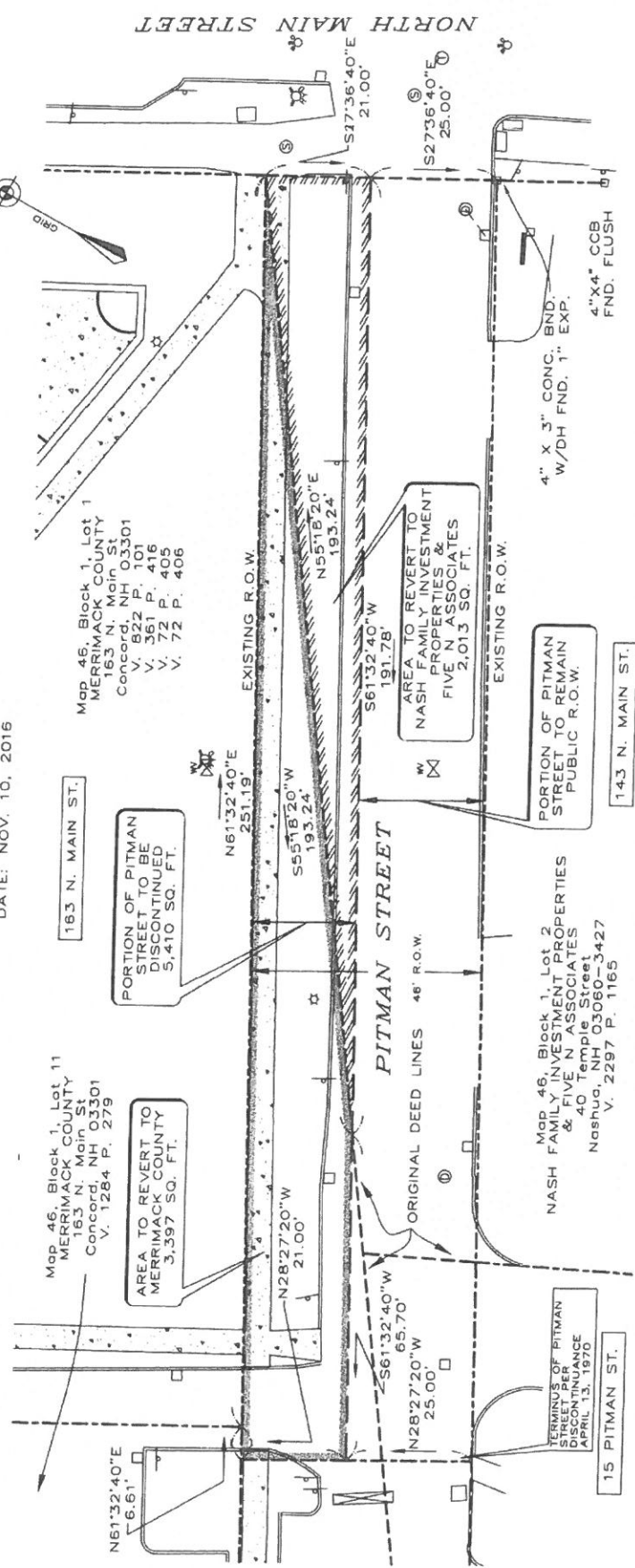
cc: (w/encl.) Heather R. Shank, City Planner  
Stephen A. Marro, County Administrator  
Erin M. Vanden Borre, Esq.

PREPARED BY:

**RICHARD D. BARTLETT  
& ASSOCIATES, LLC**  
 214 North State Street  
 Concord, N.H. 03301  
 Tel: (603) 226-8770  
 Fax: (603) 224-6267  
 rdb@richarddbartlett.com  
 www.richarddbartlett.com  
 LICENSED LAND SURVEYOR

**PROPOSED DISCONTINUANCE OF A  
 PORTION OF PITMAN STREET**  
 prepared for  
**MERRIMACK COUNTY**

LOCATION: PITMAN STREET  
 CONCORD, N.H.  
 JOB NO.: 416.134  
 DATE: NOV. 10, 2016



Map 46, Block 1, Lot 12  
 CONCORD HOUSING AUTHORITY  
 23 Green Street  
 Concord, NH 03301-4021  
 V. 1210 P. 381

**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (the "Agreement"), dated this \_\_\_\_ day of February, 2017, by and between **NASH FAMILY INVESTMENT PROPERTIES** and **FIVE N ASSOCIATES**, having an address of \_\_\_\_\_ (collectively, the "Seller") and **MERRIMACK COUNTY**, having an address of 333 Daniel Webster Highway, Suite #2, Boscawen, New Hampshire 03303 (the "Buyer").

**RECITALS:**

WHEREAS, the Seller is the owner of that certain portion of a parcel of land consisting of approximately 2,013 square feet and located at the intersection of Pitman Street and North Main Street, Concord, Merrimack County, New Hampshire, as more particularly identified on **Exhibit A** attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the Seller wishes to sell, and the Buyer wishes to buy, the Premises upon the terms and conditions set forth herein below.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereby agree as follows:

1. **PURCHASE AND SALE.** Subject to the terms and conditions set forth in this Agreement, the Seller agrees to sell the Premises to the Buyer and the Buyer agrees to purchase the Premises from the Seller.

2. **PURCHASE PRICE.** The total purchase price for the Premises shall be \_\_\_\_\_ and shall be paid to the Seller at Closing by certified check or wire transfer, subject to the adjustments required in this Agreement.

3. **CLOSING.** The closing (the "Closing") shall be held on or before the date which is thirty (30) days following the date all of the contingencies set forth in this Agreement have been satisfied, but no later than **[May 1, 2017]**, at the Merrimack County Registry of Deeds, or at another location mutually agreeable to the parties.

4. **OBLIGATIONS OF THE PARTIES AT CLOSING.**

(a) At Closing, the Seller shall deliver to the Buyer:

(i) A quitclaim deed in the form attached hereto as **Exhibit B**;

Field Code Changed

(ii) Releases of any real estate liens or other instruments or agreements to be cancelled pursuant to the terms of this Agreement, in form appropriate for recording;

(iii) Evidence that all real estate taxes then due and owing are paid in full;

(iv) Evidence of the authority of the Seller to consummate the transaction contemplated in this Agreement; and

(v) Any other documents reasonably necessary to complete the transaction contemplated herein, including, without limitation, evidence satisfactory to the City of Concord to authorize the partial discontinuance of Pitman Street, a public way, the waiver of any damages accruing to Seller as may arise therefrom, and the adjustment of Seller's boundary such that this transaction may be effected as intended.

(b) At Closing, the Buyer shall deliver to the Seller:

(i) The Purchase Price; and

(ii) Any other documents reasonably necessary to complete the transaction contemplated herein.

5. TITLE MATTERS. At the Closing, the Seller shall convey, by quitclaim deed, fee simple title to the Premises to the Buyer, free and clear of all liens, leases, and other encumbrances, except those acceptable to the Buyer. The Buyer may, at its sole cost and expense, cause the title to the Premises to be examined. If upon examination of the title, the Buyer or its representative finds that the title to the Premises is, in its opinion, not in accordance with the first sentence of this paragraph 5, then the Buyer shall notify the Seller of the record title to the Premises through the date of such examination. The Seller immediately shall take all steps necessary to clear title within thirty (30) days thereafter as to any matters which are defects or clouds on the title except for any mortgages which may be satisfied at the Closing; provided, however, Seller shall not be required to incur costs or expenses totaling in excess of \$2,000 to make the title or Premises conform or to deliver possession as agreed. If the Seller is unable to clear title prior to the date of the Closing, then the Buyer may, at its sole option:

- (a) Rescind this Agreement in which event neither party will have any further rights or duties hereunder;
- (b) Take such title as the Seller can convey without any diminution in the Purchase Price; or
- (c) Postpone the Closing for a reasonable time so the Seller can exercise good faith efforts to clear title.



6. PRORATIONS: TRANSFER TAX AND RECORDING FEES. The real estate taxes and other customary items shall be prorated as of the day of Closing. The proration of all general real estate taxes and assessments ("Taxes") and other adjustments and prorations required under this Agreement shall be computed as of the date of Closing and the Purchase Price paid to Seller hereunder shall be adjusted to reflect such prorations. Taxes shall be prorated on a per diem basis as of the Closing. The parties shall use reasonable efforts to compute or estimate the prorations prior to Closing and Seller shall provide before Closing such supporting evidence for the prorations as is available. In the event accurate prorations or other adjustments cannot be made at Closing because of the lack of necessary information, the parties shall prorate on the best available information, subject to prompt adjustment upon the receipt of the necessary information. The Buyer shall pay the entire real estate transfer tax imposed on the sale of the Premises to the Buyer, if any, as may be required by New Hampshire law. The Buyer shall also be responsible for any and all recording fees in connection with the transactions contemplated by this Agreement. The Buyer shall be responsible for all of its own attorney's fees and expenses in negotiating and consummating the transaction as contemplated herein, as well as those reasonably incurred by the Seller, provided, however, that the Seller shall have provided evidence of such fees and expenses in a form reasonably acceptable to the Buyer.

7. PERMITTING CONTINGENCY. The Buyer's obligations hereunder are expressly contingent upon the City of Concord granting the Buyer's petition for a partial discontinuance of Pitman Street (the "Buyer's Discontinuance Petition"), and a lot line adjustment regarding Seller's remainder area, in connection with the Buyer's development of its real property located to the north of the Premises. The parties acknowledge that the Premises are a part of the area which is the subject of the Buyer's Discontinuance Petition.

8. BROKER. The parties hereby represent that they have not employed the services of a broker to bring about the sale of the Premises. Seller indemnifies and holds Buyer harmless from any and all commissions or any other claims by brokers or other third parties seeking compensation or fees for this sale through the Seller, and Buyer hereby indemnifies and holds the Seller harmless from any claims by brokers or other third parties seeking compensation or fees for this sale through the Buyer.

9. CONDITION OF PREMISES. The physical condition of the Premises shall be delivered to the Buyer "as is", "where is" and with all faults.

10. BUYER'S WARRANTIES AND REPRESENTATIONS. The Buyer hereby warrants and represents the following:

(a) The Buyer has full power and authority to enter into and perform the obligations described in this Agreement, and the Buyer agrees to be bound by the terms and conditions of this Agreement.

(b) There is no suit, action or proceeding, pending or threatened, against the Buyer which raises or would raise any question concerning the validity or enforceability of this Agreement or the transactions contemplated herein.

(c) On or before Closing, the Buyer will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be consistent with this Agreement and customarily and reasonably required by the Seller to complete the transaction described in this Agreement.

11. SELLER'S WARRANTIES AND REPRESENTATIONS. The Seller hereby warrants and represents the following:

(a) The Premises are not subject to any outstanding agreements of sale, option, rights of first offer or first refusal, or other rights of any third party to acquire the Premises.

(b) The Seller has full power and authority to enter into and perform the obligations described in this Agreement, and the Seller agrees to be bound by the terms and conditions of this Agreement.

(c) There is no suit, action or proceeding, pending or threatened, against the Seller which raises or would raise any question concerning the validity or enforceability of this Agreement or the transactions contemplated herein.

(d) On or before Closing, the Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be consistent with this Agreement and customarily and reasonably required by the Buyer to complete the transaction described in this Agreement.

12. RISK OF LOSS; EMINENT DOMAIN. The Seller shall bear the risk of loss for the Premises until the Closing Date.

13. DEFAULT. Upon a default under this Agreement, the non-defaulting party shall have all remedies available at law or in equity.

14. MISCELLANEOUS. The following further provisions apply to this Agreement:

(a) Separability of Provisions. The invalidity or unenforceability of any term of this Agreement shall in no way affect the validity or enforcement of any other provision.

(b) Governing Law. This Agreement shall be governed under the laws of the State of New Hampshire.



(c) Notices. All notices required or provided for under this Agreement shall be deemed to have been delivered when hand-delivered or when sent via Federal Express or other overnight carrier, and shall be sent to the parties at the following addresses:

If to the Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Buyer:

Stephen A. Marro, County Administrator  
County of Merrimack  
333 Daniel Webster Highway, Suite #2  
Boscawen, New Hampshire 03303

With a copy to:

Erin M. Vanden Borre, Esq.  
Hinckley, Allen & Snyder LLP  
11 South Main Street, Suite 400  
Concord, New Hampshire 03301

And to:

Ari B. Pollack, Esq.  
Gallagher, Callahan & Gartrell, P.C.  
214 N. Main Street  
Concord, New Hampshire 03301

(d) Effect of Agreement. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the successors, heirs, designees and assigns of the Seller and Buyer.

(e) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the sale of the Premises, and supersedes all previous agreements, verbal or written. This Agreement may not be orally amended or modified. There are no other agreements, representations, or warranties among the parties that are not contained in this Agreement.

(f) Counterparts/facsimile. This Agreement may be executed by facsimile and in as many counterparts as may be deemed appropriate by the parties, all of which when taken together shall be deemed an original and shall comprise one (1) agreement.

*[Signatures appear on the following page.]*

EXECUTED as of the day and date first written above.

BUYER:

MERRIMACK COUNTY

By: \_\_\_\_\_  
Name: Bronwyn Asplund-Walsh  
Title: County Commissioner

By: \_\_\_\_\_  
Name: Tara Reardon  
Title: County Commissioner

By: \_\_\_\_\_  
Name: Peter Spaulding  
Title: County Commissioner

SELLER:

NASH FAMILY INVESTMENT PROPERTIES

By: \_\_\_\_\_  
Name:  
Title:

FIVE N ASSOCIATES

By: \_\_\_\_\_  
Name:  
Title:

# CITY OF CONCORD

## PETITION

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*In the year of our Lord two thousand seventeen*

### To the City Council of the City of Concord:

*The undersigned respectfully represent that for the accommodation of the public there is occasion for the complete discontinuance of a portion of a public highway known as Pitman Street,*

*in said city, beginning at the intersection of the northerly right-of-way line of Pitman Street and the westerly right-of-way line of North Main Street at land now of Merrimack County; thence*

*South 27° 36' 40" East along the westerly right-of-way line of North Main Street a distance of 21.00 feet to a granite bound to be set; thence*

*South 61° 32' 40" West across Pitman Street a distance of 191.78 feet to a point of intersection with the boundary line between land now of Merrimack County and land now of Nash Family Investment Properties & Five N Associates; thence*

*South 61° 32' 40" West across Pitman Street a distance of 65.70 feet to a granite bound to be set at the terminus of Pitman Street as discontinued on April 13, 1970 and land now of Concord Housing Authority; thence*

*North 28° 27' 20" West along the terminus of Pitman Street as discontinued on April 13, 1970 and land now of Concord Housing Authority a distance of 21.00 feet to a point at the northerly right-of-way line of Pitman Street and land now of Merrimack County; thence*

*North 61° 32' 40" East along the northerly right-of-way line of Pitman Street and land now of Merrimack County a distance of 6.61 feet to a point of intersection with the boundary line with other land now of Merrimack County; thence*

*North 61° 32' 40" East along the northerly right-of-way line of Pitman Street and land now of Merrimack County a distance of 251.19 feet to the point of beginning.*

Containing 5,410 square feet, more or less, and meaning and intending to describe the complete discontinuance of a portion of the Pitman Street right-of-way shown as "Portion of Pitman Street to be Discontinued – 5,410 Sq. Ft." on a plan attached hereto as Exhibit A and entitled "Proposed Discontinuance of a Portion of Pitman Street prepared for Merrimack County," dated Nov. 10, 2016, prepared by Richard D. Bartlett & Associates, LLC, to be recorded at the Merrimack County Registry of Deeds.

# CITY OF CONCORD

## PETITION

---

*In the year of our Lord two thousand seventeen*

### To the City Council of the City of Concord:

*The undersigned respectfully represent that for the accommodation of the public there is occasion for the complete discontinuance of a portion of a public highway known as Pitman Street,*

(Continued from page 1)

The Petitioners waive all rights to damages as a result of the complete discontinuance and pray that the portion of the Pitman Street right-of-way described above be completely discontinued as a public highway.

Respectfully submitted,

#### MERRIMACK COUNTY

By: \_\_\_\_\_  
Name: Bronwyn Asplund-Walsh  
Title: County Commissioner

By: \_\_\_\_\_  
Name: Tara Reardon  
Title: County Commissioner

By: \_\_\_\_\_  
Name: Peter Spaulding  
Title: County Commissioner

#### NASH FAMILY INVESTMENT PROPERTIES

By: \_\_\_\_\_  
Name:  
Title:

#### FIVE N ASSOCIATES

By: \_\_\_\_\_  
Name:  
Title: