

CONTRACT DOCUMENTS

for

95 Mechanic Street Seawall and Wharf Replacement

City of Portsmouth

Bid #31-21

City of Portsmouth, New Hampshire, Rockingham County

March 2021

Karen S. Conard, City Manager

City of Portsmouth, New Hampshire

Prepared by:
Tighe and Bond
for
City of Portsmouth
Engineering Division
Public Works Department

TABLE OF CONTENTS

INVITATION TO BID	
INSTRUCTION TO BIDDERS	
AWARD AND EXECUTION OF CONTRACT	
PROPOSAL	
BID SECURITY BOND	
BIDDER'S QUALIFICATIONS	
AUTHORIZATION AND RELEASE	
CONTRACT AGREEMENT	
NOTICE OF INTENT TO AWARD	
NOTICE TO PROCEED	
CHANGE ORDER	
PERFORMANCE BOND	
LABOR AND MATERIALS PAYMENT BOND	
CONTRACTOR'S AFFIDAVIT	
CONTRACTOR'S RELEASE	
INSURANCE REQUIREMENTS	
GENERAL REQUIREMENTS	
SUMMARY	
CONTROL OF WORK	
TEMPORARY FACILITIES	
MEASUREMENT AND PAYMENT	
SPECIAL REQUIREMENTS	
DRAWINGS	
SPECIAL PROVISIONS	
PLANS and TECHNICAL SPECIFICATIONS, dated March 31, 2021	

95 Mechanic Street Seawall and Wharf Replacement

Bid #31-21

INVITATION TO BID

Sealed bid proposals, **plainly marked**, “**Bid #31-21**” 95 Mechanic Street Seawall and Wharf Replacement, **on the outside of the mailing envelope as well as the sealed bid envelope**, addressed to the Finance/Purchasing Department, City Hall, 1 Junkins Avenue, Portsmouth, New Hampshire, 03801, will be accepted until **11:00 AM on May 4th, 2021**; at which time all bids will be publicly opened and read aloud.

The project consists of removing and replacing a granite seawall with an alternative option to replace the LaCava Wharf on City property in downtown Portsmouth, adjacent to the Peirce Island Bridge. The existing timber wharf shown on the plans has been removed and is included for informational purposes only. The Contractor will be required to keep Mechanic Street open during construction.

Plans and bid specifications are available at the City’s website:

<http://www.cityofportsmouth.com/finance/purchasing.htm>. Addenda to this bid, if any, including written answers to questions, will be posted on the City of Portsmouth website. Addenda and updates will NOT be sent directly to vendors.

Completion date will be 134 calendar days for Base Bid only and 208 calendar days for Base Bid plus Timber Wharf from the date of the Notice to Proceed. Liquidated damages shall be assessed at \$1,000.00 per day.

Bidders must determine the quantities of work required and the conditions under which the work will be performed.

Mandatory Pre-bid meeting: The City will be requiring a mandatory Pre-Bid Meeting by “Zoom” on **April 20th, 2021 at 10:00 am** that interested bidders must “register” to attend. A link will be provided on the City’s website to register. On the day of the pre-bid meeting, the project site will be made available for interested bidders to visit the site between 11:45 AM until 12:45 PM.

The City of Portsmouth further reserves the right to reject any or all bids, to waive technical or legal deficiencies, to re-bid, and to accept any bid that it may deem to be in the best interest of the City. Also, the City reserves the right to approve or deny subcontractors for this project.

Each Bidder shall furnish a bid security in the amount of ten percent (10%) of the base bid. The Bid Security may be in the form of a certified check drawn upon a bank within the State of New Hampshire or a bid bond executed by a surety company authorized to do business in the State of New Hampshire, made payable to the City of Portsmouth, N.H.

Questions regarding submittal requirements should be directed to Denise Carpenter, Purchasing Coordinator, at the following number: 603-610-7227. Formal/technical questions shall be directed to Raymond Pezzullo, PE, Assistant City Engineer and submitted in writing to rpezzullo@cityofportsmouth.com by **4:30 pm on April 26^h, 2021** and shall be answered in addenda.

INSTRUCTIONS TO BIDDERS

BIDDING REQUIREMENTS AND CONDITIONS

1. Special Notice to Bidders

Appended to these instructions is a complete set of bidding and general contract forms. These forms may be detached and executed for the submittal of bids. The plans, specifications, and other documents designated in the proposal form will be considered as part of the proposal, whether attached or not.

Addenda to this bid document, if any, including written answers to questions, will be posted by April 28th, 2021 on the City of Portsmouth website at:

<http://www.cityofportsmouth.com/finance/purchasing.htm> under the project heading. Addenda and updates will NOT be sent directly to firms. Contractors submitting a bid should check the web site daily for addenda and updates after the release date. Firms should print out, sign and return addenda with the proposal. Failure to do so may result in disqualification.

2. Interpretation of Quantities in Bid Schedules

The quantities appearing in the bid schedule are approximate only and are prepared for the comparison of bids. Payment to the contractor will be made only for actual work performed and accepted in accordance with the contract. Any scheduled item of work to be done and materials to be furnished may be increased, decreased or omitted as hereinafter provided, and no claim for loss, anticipated profits or costs incurred in anticipation of work not ultimately performed will be allowed due to such increase or decrease.

3. Examination of Plans, Specifications and Site Work

The bidder is expected to examine carefully the site of the proposed work, the plans, standard specifications, supplemental specifications, special provisions and contract forms before submitting a proposal. The submission of a bid shall be considered conclusive evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the contract. It will be conclusive evidence that the bidder has also investigated and is satisfied with the sources of supply for all materials.

Plans, surveys, measurements, dimensions, calculations, estimates and statements as to the condition under which the work is to be performed are believed to be correct, but the contractors must examine for themselves, as no allowance will be made for any errors or inaccuracies that maybe found therein.

4. Familiarity with Laws

The bidder is assumed to have made himself or herself familiar with all federal and state laws and all local by-laws, ordinances and regulations which in any manner affect those engaged or employed on the work or affect the materials or equipment used in the work or affect the conduct of the work, and the bidder, if awarded the contract, shall be obligated to perform the work in conformity with said laws, by-laws, ordinances and regulations notwithstanding its ignorance thereof. If the bidder shall discover any provision in the plans or specifications which is in conflict with any such law, by-law, ordinance or regulation the bidder shall forthwith report it to the engineer in writing.

5. Preparation of Proposal

a) The bidder shall submit its proposal upon the forms furnished by the Owner. The bidder shall specify a lump sum price in figures, for each pay item for which a quantity is given and shall also show the products of

the respective prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the amount of the several items. All words and figures shall be in ink or typed.

If a unit price or a lump sum bid already entered by the bidder on the proposal form is to be altered it should be crossed out with ink, the new unit price or lump sum bid entered above or below it and initialed by the bidder, also with ink.

b) The bidder's proposal must be signed with ink by the individual, by one or more general partners of a partnership, by one or more members or officers of each firm representing a joint venture; by one or more officers of a corporation, by one or more members (if member-managed) or managers (if manager-managed) of a limited liability company, or by an agent of the contractor legally qualified and acceptable to the owner. If the proposal is made by an individual, his or her name and post office address must be shown, by a partnership the name and post office address of each general and limited partner must be shown; as a joint venture, the name and post office address of each venturer must be shown; by a corporation, the name of the corporation and its business address must be shown, together with the name of the state in which it is incorporated, and the names, titles and business addresses of the president, secretary and treasurer.

6. Nonconforming Proposals

Proposals will be considered nonconforming and may be rejected in the Owner's sole discretion for any of the following reasons:

- If the proposal is on a form other than that furnished by the Owner, or if the form is altered or any portion thereof is detached;
- If there are unauthorized additions, conditional or altered bids, or irregularities of any kind which may tend to make the proposal or any portion thereof incomplete, indefinite or ambiguous as to its meaning;
- If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award; or
- If the proposal does not contain a unit price for each pay item listed except in the case of authorized alter pay items.

7. Proposal Guaranty

No proposal will be considered unless accompanied by a bid bond, surety, or similar guaranty of the types and in an amount not less than the amount indicated in the Invitation to Bid. All sureties shall be made payable to the "City of Portsmouth". If a bid bond is used by the bidder it shall be:

- In a form satisfactory to the Owner;
- With a surety company licensed, authorized to do business in, and subject to the jurisdiction of the courts of the State of New Hampshire; and
- Conditioned upon the faithful performance by the principal of the agreements contained in the sub-bid or the general bid.

In the event any irregularities are contained in the proposal guaranty, the bidder will have four business days (not counting the day of opening) to correct any irregularities. The corrected guaranty must be received by 4:00 p.m. If irregularities are not corrected to the satisfaction of the Owner, the Owner, in its sole discretion, may reject the bid.

8. Delivery of Proposals

When sent by mail, the sealed proposal shall be addressed to the Owner at the address and in the care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place specified in the invitation for bids. Proposals received after the time for opening of the bids will be returned to the bidder, unopened.

9. Withdrawal of Proposals

A bidder will be permitted to withdraw his or her proposal unopened after it has been submitted if the Owner receives a request for withdrawal in writing prior to the time specified for opening the proposals.

10. Public Opening of Proposals

Proposals will be opened and read publicly at the time and place indicated in the invitation for bids. Bidders, their authorized agents, and other interested parties are invited to be present.

11. Disqualification of Bidders

Any or all of the following reasons may be deemed by Owner in its sole discretion as being sufficient for the disqualification of a bidder and the rejection of his proposal:

- More than one proposal for the same work from an individual, firm, or corporation under the same or different name;
- Evidence of collusion among bidders;
- Failure to submit all required information requested in the bid specifications;
- Lack of competency or of adequate machinery, plant or other equipment, as revealed by the statement of bidders qualification or otherwise;
- Uncompleted work which, in the judgment of the owner, might hinder or prevent the prompt completion of additional work if awarded;
- Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts
- Default or unsatisfactory performance on previous contracts; or
- Such disqualification would be in the best interests of the Owner.

12. Material Guaranty and Samples

Before any contract is awarded, the bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all materials to be used in the construction of the work, and the Owner may, in its sole discretion, reject the bid based on the contents of the statement or as a result of the failure of the bidder to submit the statement.

AWARD AND EXECUTION OF CONTRACT

1. Consideration of Proposals

a) After the proposals are opened and read, they will be compared on the basis of the total price to be charged to perform the work. The results of such comparisons will be immediately available to the public. In case of a discrepancy between the prices written in words and those written figures, the prices written in words shall govern. In case of a discrepancy between the total shown in the proposal and that obtained by adding the products of the quantities of items and unit bid prices, the latter shall govern.

b) The right is reserved to reject any or all proposals, to waive technicalities or to advertise for new proposals, if in the sole discretion of the Owner the best interest of the City of Portsmouth will be promoted thereby.

2. Award of Contract

The award will be based on the Base bid, or the Base Bid with any combination of Add Alternates the City deems to be in its best interest.

Within 30 calendar days after the opening of proposals, if a contract is to be awarded, the award will be made to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. A responsible and qualified bidder is one who is not disqualified and otherwise has a history and reputation for performing timely, quality work within project budgets. The successful bidder will be notified, in writing, emailed to the address on his or her proposal, that his or her bid has been accepted and that the bidder has been awarded the contract.

3. Cancellation of Award

The Owner reserves the right to cancel the award of any contract at any time before the execution of such contract by all parties without any liability of the Owner.

4. Return of Proposal Guaranty

All proposal guaranties, except those of the three lowest bidders, will be returned if requested immediately following the opening and checking of the proposals. The proposal guaranties of the three lowest bidders will be returned within ten days following the award of the contract if requested.

5. Contract Bonds

At the time of the execution of the contract, the successful bidder shall furnish:

- a) A performance bond in the amount of 100 percent of the contract amount.
- b) Labor and materials payment bond in the sum equal to 100 percent of the contract amount.

AWARD AND EXECUTION OF CONTRACT (continued)

Each bond shall be:

1. In a form satisfactory to the Owner.
2. With a surety company licensed and authorized to do business and with a resident agent designated for services of process in the State of New Hampshire.
3. Conditioned upon the faithful performance by the principal of the agreements contained in the original bid.

All premiums for the contract bonds are to be paid by the contractor.

6. Execution and Approval of Contract

The successful bidder will be required to present all contract bonds and execute the contract within 10 days following notification of acceptance of his or her bid. No contract shall be considered as in effect until it has been fully executed by all parties thereto.

7. Failure to Execute Contract

Failure to execute the contract and file acceptable bonds within 10 days after notification of acceptance of bid shall be just cause for the cancellation of the award and the forfeiture of the proposal guarantee which shall become the property of the Owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised as the Owner may determine in its sole discretion.

95 Mechanic Street Seawall and Wharf Replacement

Bid #31-21

PROPOSAL FORM

CITY OF PORTSMOUTH, N.H.

To the City of Portsmouth, New Hampshire, herein called the Owner.

The undersigned, as Bidder, herein referred to as singular and masculine declares as follows:

1. All interested in the Bid as Principals are named herein.
2. This bid is not made jointly, or in conjunction, cooperation or collusion with any other person, firm, corporation, or other legal entity;
3. No officer, agent or employee of the Owner is directly or indirectly interested in this Bid.
4. The bidder has carefully examined the site of the proposed work and fully informed and satisfied himself as to the conditions there existing, the character and requirements of the proposed work, the difficulties attendant upon its execution and the accuracy of all estimated quantities stated in this Bid, and the bidder has carefully read and examined the Drawings, Agreement, Specifications and other Contract Documents therein referred to and knows and understands the terms and provisions thereof;
5. The bidder understands that the quantities of work calculated in the Bid or indicated on the Drawings or in the Specifications or other Contract Documents are approximate and are subject to increase or decrease or deletion as deemed necessary by the Portsmouth City Engineer. Any such changes will not result in or be justification for any penalty or increase in contract prices; and agrees that, if the Bid is accepted the bidder will contract with the Owner, as provided in the Contract Documents, this Bid Form being part of said Contract Documents, and that the bidder will supply or perform all labor, services, plant, machinery, apparatus, appliances, tools, supplies and all other activities required by the Contract Documents in the manner and within the time therein set forth, and that the bidder will take in full payment therefor the following item prices, to wit:

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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1.	General Requirements	LS	1	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

2.	Mobilization (Shall Not exceed 10% of the Total Amount of all Bid Items)	LS	1	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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3. Quality Control

3A.	Grain Size Through No. 200 Sieve	EA	4	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

3B.	Moisture Density Relationship-Granular Materials	EA	2	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

3C.	Dry Density and As-Placed Moisture Content	½ DAY	2	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

3D.	Concrete Compressive Strength	EA	20	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

3E.	Pavement Density	½ DAY	1	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

3F.	Pile Splice Weld Testing	½ DAY	12	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

4.	Erosion and Sedimentation Controls	LS	1	\$ _____	\$ _____
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UNIT PRICE IN WORDS: _____

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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5. Demolition and Removal

5A. Seawalls LS 1 \$_____ \$_____

UNIT PRICE IN WORDS: _____

5B. Cutoff Timber Piles EA 10 \$_____ \$_____

UNIT PRICE IN WORDS: _____

5C. Extract Timber Piles EA 10 \$_____ \$_____

UNIT PRICE IN WORDS: _____

6. Temporary Earth Retaining Systems and Cofferdams

6A. Earth Retaining Systems LS 1 \$_____ \$_____

UNIT PRICE IN WORDS: _____

6B. Cofferdams LS 1 \$_____ \$_____

UNIT PRICE IN WORDS: _____

7. Dewatering LS 1 \$_____ \$_____

UNIT PRICE IN WORDS: _____

8. H-Piles

8A. Furnish H-Piles LF 880 \$_____ \$_____

UNIT PRICE IN WORDS: _____

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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8B.	Install H-Piles	LF	600	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

8C.	Field Splices	EA	4	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

8D.	Initial Drive PDA	DAY	1	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

8E.	Re-Strike PDA	DAY	1	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

9. Seawalls

9A.	Concrete Seawall	LS	1	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

9B.	Steel Sheet Pile Seawall STA 0+70 to 1+065	LF	36.5	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

9C.	Steel Sheet Pile Seawall STA 1+065 to 1+30	LF	23.5	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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10.	Site Restoration	LS	1	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

11.	Demobilization and Clean-Up	LS	1	\$_____	\$_____
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UNIT PRICE IN WORDS: _____

TOTAL BASE BID AMOUNT FOR DETERMINATION OF LOWEST BID

TOTAL SUM OF EXTENDED UNIT PRICE
ITEMS PLUS LUMP SUM ITEMS (ITEMS 1 - 11)

\$ _____
(Amount in Figures)

_____ Dollars and _____ Cents
(Amount in Words)

PROPOSAL FORM "Base Bid"

The award will be based on the Base bid, or the Base Bid with any combination of Add Alternates the City deems to be in its best interest.

ADD ALTERNATIVES

At the owner's option, and in accordance with the General Conditions, the following Alternates Lump Sum and Unit Prices shall be used for additions and/or deletions to the Scope of Work, and shall be inclusive of furnishing and installing of material, labor, trucking, overhead, profit, equipment, hoisting, engineering, scaffolding, power hookups, protection, shop drawings, taxes, permits, appliances, delivery and supervision and shall remain in effect until completion of the contract.

The Owner will inform the Contractor which Alternates, if any, will be added to the Base Bid prior to contract execution and bonding.

ADD ALTERNATIVES:

ADD ALT.	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
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Add Alt 1. Wharf, Additional General Req's LS 1 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 2. Wharf, Furnish PT Timber Piles LF 3,640 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 3. Wharf, Install PT Timber Piles LF 3,210 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 4. Wharf, Furnish H-Piles LF 600 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 5. Wharf, Install H-Piles LF 550 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 6. Wharf PT Timber Superstructure and Decking SF 3,854 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Alt 7. Wharf, Ornamental Railing LF 130 \$_____ \$_____

UNIT PRICE IN WORDS: _____

 Add
 ALT. DESCRIPTION UNIT QUANTITY UNIT BID PRICE TOTAL COST

Add Seawall, Chain Link
 Alt 8. Fence LF 130 \$_____ \$_____

UNIT PRICE IN WORDS: _____

Add Wharf, IPE
 Alt 9. Timber Decking SF 3,854 \$_____ \$_____

UNIT PRICE IN WORDS: _____

DEDUCT Wharf, PT Timber
 Alt 10. Decking SF 3,854 \$_____ \$_____

UNIT PRICE IN WORDS: _____

The undersigned agrees that for extra work, if any, performed in accordance with the terms and provisions of the Contract Documents, the bidder will accept compensation as stipulated therein.

 Date Company

By: _____
 Print Name

By: _____
 Signature

Title: _____

 Business Address

 City, State, Zip Code

Telephone: _____

Email: _____

The Bidder has received and acknowledged Addenda No. _____ through _____.

All Bids are to be submitted on this form and in a sealed envelope, plainly marked on the outside with the Bidder's name and address and the Project name as it appears at the top of the Proposal Form.

BID SECURITY BOND

(This format provided for convenience, actual Bid Bond is acceptable in lieu of, if compatible.)

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned

_____, as Principal, and

_____, as Surety, are hereby

held and firmly bound unto _____

IN THE SUM OF _____

as liquidated damages for payment of which, well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas the Principal has submitted to the

_____ A CERTAIN Bid attached hereto and hereby made a part hereof to enter into a contract in writing, hereinafter referred to as the "AGREEMENT" and or "CONTRACT", for

NOW THEREFORE,

- (a) If said Bid shall be rejected or withdrawn as provided in the INFORMATION FOR BIDDERS attached hereto or, in the alternative,
- (b) If said Bid shall be accepted and the Principal shall duly execute and deliver the form of AGREEMENT attached hereto and shall furnish the specified bonds for the faithful performance of the AGREEMENT and/or CONTRACT and for the payment for labor and materials furnished for the performance of the AGREEMENT and or CONTRACT,

then this obligation shall be void , otherwise it shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder in no event shall exceed the amount of this obligation.

BID SECURITY BOND (continued)

The Surety, for value received, hereby agrees that the obligation of said surety and its bond shall be in no way impaired or affected by any extensions of the time within such BID may be accepted, and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the parties hereto have duly executed

this bond on the _____ day of _____, 2021.

(Name of Principal) L.S.

(SEAL)

BY _____

(Name of Surety)

BY _____

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. Add separate sheets if necessary. **This statement shall be filled out and submitted with Bid.**

1. Name of Bidder
2. Permanent Main Office Address
3. Form of Entity
4. When Organized
5. Where Organized
6. How many years have you been engaged in the contracting business under your present name; also state names and dates of previous firm names, if any.
7. Contracts on hand; (schedule these, showing gross amount of each contract and the approximate anticipated dates of completion).
8. General character of work performed by your company.
9. Have you ever failed to complete any work awarded to you? _____(no)_____(yes). If so, where and why?
10. Have you ever defaulted on a contract?
_____ (no)_____ (yes). If so, where and why?
11. Have you ever failed to complete a project in the time allotment according to the Contract Documents?
_____ (no)_____ (yes). If so, where and why?
12. List your last 10 contracts of \$200,000 or more recently performed, stating:
 - A. the approximate cost for each
 - B. the nature of the work
 - C. the month and year completedIf the Bidder has performed fewer than 10 contracts of \$200,000 or more, provide all project history since the date of the organization or the last three years.
13. List your major equipment available for this contract.
14. List your key personnel such as project superintendent and foremen available for this contract.
15. Submit two (2) reference letters from prior governmental owners indicating successful completion of marine timberwork projects of similar nature and complexity, which did require tidal work and good fit and finish.

STATEMENT OF BIDDERS QUALIFICATIONS (continued)

16. List any subcontractors whom you would expect to use for the following (unless this work is to be done by your own organization).

a. Pilings _____

b. Removals _____

17. With what banks do you do business?

a. Do you grant the Owner permission to contact this/these institutions?
____ (yes) ____ (no).

b. Latest Financial Statements, certified audited if available, prepared by an independent certified public accountant, must be attached and Certified Audited Statement are preferred. Internal statements may be attached only if independent statements were not prepared.

Dated at _____ this _____ day of _____, 2021.

Name of Bidder

BY _____

TITLE _____

State of _____

County of _____

_____ being duly sworn, deposes and

says that the bidder is _____ of _____
(Name of Organization)

and answers to the foregoing questions and all statements contained therein are true and correct.

Sworn to before me this ____ day of _____, 2021.

Notary of Public

My Commission expires _____

AUTHORIZATION AND RELEASE

As part of the Bid, the Bidder shall execute and submit the Authorization and Release set forth below:

By submitting this Bid, Bidder authorizes Owner, Engineer, and their employees and agents to make such inquiries as they deem necessary to determine whether Bidder's qualifications are satisfactory. Bidder hereby agrees to release and hold harmless Owner, Engineer and any person or entity requested to respond to Owner or Engineer regarding Bidder's qualifications from any and all claims and causes of action related to such inquiries, including without limitation actions for defamation, slander or interference with contractual relations.

Bidder: _____

By: _____

Name: _____

Title: _____

CONTRACT AGREEMENT

95 Mechanic Street Seawall and Wharf Replacement

Bid #31-21

THIS AGREEMENT made as of the ____ day of ____ in the year **2021**, by and between the City of Portsmouth, New Hampshire (hereinafter call the Owner) and _____ (hereinafter called the Contractor),

WITNESSETH; that the Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE I - Work - The Contractor shall perform all work as specified or indicated in the Contract Documents for the completion of the Project.

A) The Contractor shall provide, at his expense, all labor, materials, equipment and incidentals as may be necessary for the expeditious and proper execution of the Project.

ARTICLE II - ENGINEER - The City Engineer, or his authorized representative will act as engineer in connection with completion of the Project in accordance with the Contract Documents.

ARTICLE III - CONTRACT TIME - The work will commence in accordance with the Notice to Proceed.

ARTICLE IV - CONTRACT PRICE - Owner shall pay Contractor for performance of the work in accordance with the Contract Documents as shown under item prices in the Bid Proposal.

ARTICLE V - PAYMENT - Partial payments will be made in accordance with the Contract Documents. Upon final acceptance of the work and settlement of all claims, Owner shall pay the Contractor the unpaid balance of the Contract Price, subject to additions and deductions provided for in the Contract Documents.

ARTICLE VI - RETAINAGE – To insure the proper performance of this Contract, the Owner shall retain ten percent of the Contract Price as specified in the Contract Documents.

ARTICLE VII - LIQUIDATED DAMAGES - In event the Contractor fails to successfully execute the work within the specified contract time the Owner shall assess the Contractor liquidated damages in the amount of one thousand **dollars** for each calendar day beyond the specified completion date. Said liquidated damages shall be deducted from the Contract Price prior to final payment of the Contractor.

ARTICLE VIII - CONTRACT DOCUMENTS - The Contract Documents which comprise the contract between Owner and Contractor are attached hereto and made a part hereof and consist of the following:

- 8.1 This Agreement
- 8.2 Contractor's Bid and Bonds
- 8.3 Notice of Award, Notice to Proceed
- 8.4 Instruction to Bidders
- 8.5 General Requirements, Control of Work, Temporary Facilities, Measurement and Payment, Special Requirements, Utilities and Drawings
- 8.6 Insurance Requirements
- 8.7 Technical Specifications
- 8.8 Drawings
- 8.9 Special Provisions
- 8.10 Any modifications, including change orders, duly delivered after execution of this Agreement.

ARTICLE IX - TERMINATION FOR DEFAULT - Should contractor at any time refuse, neglect, or otherwise fail to supply a sufficient number or amount of properly skilled workers, materials, or equipment, or fail in any respect to prosecute the work with promptness and diligence, or fail to perform any of its obligations set forth in the Contract, Owner may, at its election, terminate the employment of Contractor, giving notice to Contractor in writing of such election, and enter on the premises and take possession, for the purpose of completing the work included under this Agreement, of all the materials, tools and appliances belonging to Contractor, and to employ any other persons to finish the work and to provide the materials therefore at the expense of the Contractor.

ARTICLE X - INDEMNIFICATION OF OWNER - Contractor will indemnify Owner against all suits, claims, judgments, awards, loss, cost or expense (including without limitation attorneys fees) arising in any way out of the Contractor's performance or non-performance of its obligations under this Contract. Contractor will defend all such actions with counsel satisfactory to Owner at its own expense, including attorney's fees, and will satisfy any judgment rendered against Owner in such action.

ARTICLE XI - PERMITS - The Contractor will secure at its own expense, all permits and consents required by law as necessary to perform the work and will give all notices and pay all fees and otherwise comply with all applicable City, State, and Federal laws, ordinances, rules and regulations. The environmental permits already obtained by the City are included as an attachment to the Technical Specification.

ARTICLE XII - INSURANCE - The Contractor shall secure and maintain, until acceptance of the work, insurance with limits not less than those specified in the contract.

ARTICLE XIII - MISCELLANEOUS -

- 13.1 Neither Owner nor Contractor shall, without the prior written consent of the other, assign, sublet or delegate, in whole or in part, any of its rights or obligations under any of the Contract Documents; and, specifically not assign any monies due, or to become due, without the prior written consent of Owner.
- 13.2 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives, to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 13.3 The Contract Documents constitute the entire Agreement between Owner and Contractor and may only be altered amended or repealed by a duly executed written instrument.
- 13.4 This Contract shall be governed by the laws of the State of New Hampshire without regard to the principles of conflict of laws thereof.
- 13.5 The parties hereby agree that jurisdiction and venue for any action related to or arising from this contract shall reside with the Rockingham County Superior Court unless the parties shall agree otherwise.

ARTICLE XIV - OTHER PROVISIONS – Not Applicable

IN WITNESS WHEREOF, the parties hereunto executed this
AGREEMENT the day and year first above written.

NAME OF BUSINESS:

BY: _____

TITLE: _____

CITY OF PORTSMOUTH, N.H.

BY: _____
Karen S. Conard

TITLE: City Manager

NOTICE OF INTENT TO AWARD

DATE:

TO:

IN AS MUCH as you were the low responsible bidder for work entitled:

95 Mechanic Street Seawall and Wharf Replacement

Bid #31-21

In the City of Portsmouth, New Hampshire, you are hereby notified that the City intends to award the aforesaid project to you.

You are further instructed to immediately take the necessary steps for execution of the Contract within ten (10) calendar days from the date of this Notice.

Prior to starting work you must deliver to the Owner certificates of insurance and bonds which you are required to purchase and maintain in accordance with the Contract Documents. The City reserves the right to revoke this Notice if you fail to take the necessary steps to execute this Contract.

City of Portsmouth
Portsmouth, New Hampshire

Judie Belanger,
Finance Director

NOTICE TO PROCEED

DATE:

**95 Mechanic Street Seawall and Wharf Replacement
Bid #31-21**

TO:

YOU ARE HEREBY NOTIFIED TO COMMENCE WORK IN ACCORDANCE
WITH THE AGREEMENT DATED _____, ON OR
BEFORE _____ AND THE DATE OF COMPLETION OF ALL WORK SHALL
BE _____.

CITY OF PORTSMOUTH, N.H.

BY _____

TITLE _____

ACCEPTANCE OF NOTICE

RECEIPT OF THE ABOVE NOTICE TO
PROCEED IS HEREBY ACKNOWLEDGED BY

This the _____ day of _____ 2021

By: _____

Title: _____

CHANGE ORDER

Change Order Number

Date of Issuance:

Owner: City of Portsmouth

Contractor:

You are directed to make the following changes in the Contract Documents:

Description:

Purpose of Change Order:

Attachments:

CHANGE IN CONTRACT PRICE

CHANGE IN CONTRACT TIME

Original Contract Price:
\$

Original Contract Time:
134 Base Bid or 208 days

Contract Price prior to this
Change Order:
\$

Contract Time prior to this
Change Order:

Net Increase or Decrease of
this Change Order:
\$

Net Increase or Decrease of
this Change Order:

Contract Price with all
approved Change Orders:
\$

Contract Time with all
approved Change Orders:

RECOMMENDED:

RECOMMENDED:

RECOMMENDED:

by _____

by _____

by _____

PW Director

City Finance

City Project Manager

APPROVED:

APPROVED:

by _____

by _____

City Manager

Contractor

PERFORMANCE BOND

(This format provided for convenience, actual Performance Bond is acceptable in lieu, if compatible)

Bond Number _____

KNOW ALL MEN BY THESE PRESENTS

that _____ as principal, hereinafter called Contractor, and _____ (Surety Company) a [corporation] organized and existing under the laws of the State of _____ and authorized to do business in the State of New Hampshire as surety, hereinafter called Surety, are held and firmly bound unto the City of Portsmouth, N.H., hereinafter called Owner, in the amount of _____ Dollars (\$ _____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. WHEREAS, Contractor has by written agreement dated _____ entered into a contract with Owner for **95 Mechanic Street Seawall and Wharf Replacement** in accordance with drawings and specifications prepared Tighe & Bond, Inc. on behalf of the City of Portsmouth Public Works Department, 1 Junkins Avenue, Portsmouth, N.H. 03801; which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall well and faithfully do and perform the things agreed by him to be done and performed, according to the terms of said Contract and such alterations as may be made in said Contract during progress work, and shall further indemnify and save harmless the said Owner in accordance with the Contract, and shall remedy without cost to the Owner any defect which may develop within one year from the time of completion and acceptance of the work.

The Surety hereby waives notice of any alteration in work or extension of time made by the Owner or any of its agents or representatives.

Whenever Contractor shall be, and declared by Owner to be, in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for submission to the Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible Bidder, arrange for a contract between such Bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the Owner to Contractor under the Contract and any amendments thereto, less the amount paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of (2) years from the date on which final payment under the contract falls due.

PERFORMANCE BOND (continued)

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this _____ day of _____

A.D., 2021 .

In the presence of:

(Witness) (Principal) (Seal) BY: _____

(Surety Company)

(Witness) (Title) (Seal) BY: _____

Note:

If the Principal (Contractor) is a partnership, the Bond should be signed by each of the partners.

If the Principal (Contractor) is a corporation, the Bond should be signed in its correct corporate name by its duly authorized Officer or Officers.

If this bond is signed on behalf of the Surety by an attorney-in-fact, there should be attached to it a duly certified copy of his Power of Attorney showing his authority to sign such Bonds.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Agreement.

LABOR AND MATERIAL PAYMENT BOND

(This format provided for convenience, actual Labor and Material Bond is acceptable in lieu, if compatible)

Bond Number _____

KNOW ALL MEN BY THESE PRESENTS:

that _____
as Principal, hereinafter called Contractor, and _____
_____ (Surety Company) a corporation organized and existing under the laws of the
State of _____
_____ and authorized to do business in the State of New Hampshire hereinafter called
Surety, are held and firmly bound unto the City of Portsmouth, N.H. e, hereinafter called Owner, for the use and
benefit of claimants as herein below defined , in the amount of

_____ Dollars (\$ _____), for the payment whereof Principal and Surety bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, Principal has by written agreement dated _____ entered into a contract with
Owner for entered into a contract with Owner for **95 Mechanic Street Seawall and Wharf Replacement** in
accordance with drawings and specifications prepared Tighe & Bond, Inc. on behalf of the City of Portsmouth
Public Works Department, 1 Junkins Avenue, Portsmouth, N.H. 03801; which contract is by reference made a
part hereof, and is hereinafter referred to as the Contract. hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that the Principal shall promptly
make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for
use in the performance of the Contract and for the hire of all equipment, tools, and all other things contracted
for or used in connection therewith, then this obligation shall be void, otherwise it shall remain in full force and
effect, subject however, to the following conditions:

(1) A claimant is defined as one having a direct contract with the Principal or, with a subcontractor of the
Principal for labor, material, equipment, or other things used or reasonably required for use in the performance
of the Contract. "Labor and material" shall include, but not be limited to, that part of water, gas, power, light,
heat, oil and gasoline, telephone service or rental of equipment applicable to the Contract.

(2) The above named Principal and Surety hereby jointly and severally agree with the Owner that every
claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days
after the date on which the last of such claimant's work or labor was done or performed, or materials were
furnished by such a claimant, may sue on this bond for the use of such claimant, prosecute the suit by final
judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not
be liable for the payment of any such suit or any costs or expenses of any such suit, and Principal and Surety
shall jointly and severally indemnify, defend and hold the Owner harmless for any such suit, costs or expenses.

(3) No suit or action shall be commenced hereunder by any claimant:

LABOR AND PAYMENT BOND (continued)

(a) Unless Claimant, other than one having a direct contract with the Principal, shall have given notice to all the following:

The Principal, the Owner and the Surety above named, within six (6) calendar months after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State of New Hampshire save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased all work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a State court of competent jurisdiction in and for the county or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere. (4) The amount of this bond may be reduced by and to the extent of any payment of payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed on record against said improvement, whether or not claim for the amount of such lien by presented under and against this bond.

Signed and sealed this _____ day of _____, 20__ . In the presence of:

(Witness) (Principal) BY: _____ (Seal)

(Surety Company)

(Witness) (Title) BY: _____ (Seal)

Note:

If the Principal (Contractor) is a partnership, the Bond should be signed by each of the partners.

If the Principal (Contractor) is a corporation, the Bond should be signed in its correct corporate name by its duly authorized Officer or Officers.

If this bond is signed on behalf of the Surety by an attorney-in-fact, there should be attached to it a duly certified copy of his Power of Attorney showing his authority to sign such Bonds.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Agreement.

CONTRACTOR'S AFFIDAVIT

STATE OF _____ :

COUNTY OF _____ :

Before me, the undersigned, a _____
(Notary Public, Justice of the Peace)

in and for said County and State personally appeared, _____
(Individual, Partner, or duly authorized representative of Corporate)

who being duly sworn according to law deposes and says

that the cost of labor, material, and equipment and

outstanding claims and indebtedness of whatever nature

arising out of the performance of the Contract between

CITY OF PORTSMOUTH, NEW HAMPSHIRE

and _____
(Contractor)

of _____

Dated: _____

Has been paid in full for Construction of:

**95 Mechanic Street Seawall and Wharf Replacement
Bid #31-21**

(Individual, Partner, or
duly authorized
representative of
Corporate Contractor)

Sworn to and subscribed
before me this _____ day
of _____ 20 ____

CONTRACTOR'S RELEASE

KNOW ALL MEN BY THESE PRESENTS that

(Contractor) of _____, County of _____ and State of _____
_____ do hereby acknowledge
that _____ (Contractor)

has on this day had, and received from the

CITY OF PORTSMOUTH NEW HAMPSHIRE, final and completed payment for the Construction of:

95 Mechanic Street Seawall and Wharf Replacement Bid #31-21
--

NOW THEREFORE, the said _____

(Contractor)

for myself, my heirs, executors, and administrators) (for itself, its successors and assigns) do/does by these presents remise, release, quit-claim and forever discharge the City of Portsmouth, New Hampshire, its successors and assigns, of and from all claims and demands arising from or in connection with the said Contract dated _____, and of and from all, and all manners of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specifications, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demand, whatsoever in law of equity, or otherwise, against the City of Portsmouth, New Hampshire, its successors and assigns, which (I, my heirs, executors, or administrators) (it, its successors and assigns) ever had, now have or which (I, my heirs, executors, or administrators) (it, its successors and assigns) hereafter can shall or may have, for, upon or by reason of any matter, cause, or thing whatsoever; from the beginning of record time to the date of these presents.

CONTRACTOR'S RELEASE (continued)

IN WITNESS WHEREOF, _____

(Contractor)

has caused these presents to be duly executed this _____

_____ day of _____, 20__.

Signed, Sealed and Delivered
in the presence of:

(Individual-Contractor) (Seal)

(Partnership-Contractor) (Seal)

(Partner) BY _____ (Seal)

Attested: _____
(Corporation)

(Secretary) BY _____
(President or Vice President)

(Corp. Seal)

INSURANCE REQUIREMENTS

Insurance shall be in such form as will protect the Contractor from all claims and liabilities for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this contract whether such operation by himself or by anyone directly or indirectly employed by him.

The limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages:

- | | | |
|----|---|-----------|
| a. | State: | Statutory |
| b. | Applicable Federal
(e.g., Longshoreman's USLH, Jones Act): | Statutory |
| c. | Employer's Liability: | \$500,000 |

2. Contractor's General Liability which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- | | | |
|----|---|--------------|
| a. | General Aggregate | \$ 2,000,000 |
| b. | Products - Completed
Operations Aggregate | \$ 1,000,000 |
| c. | Personal and Advertising
Injury | \$ 1,000,000 |
| d. | Each Occurrence
(Bodily Injury & Property Damage) | \$ 1,000,000 |
| e. | Property Damage liability insurance will provide Explosion,
Collapse, and Under-ground coverages where applicable. | |

3. Automobile Liability:

- | | | |
|----|-----------------------------------|--------------|
| a. | Bodily Injury:
Each person | \$ 1,000,000 |
| | Each Accident | \$ 1,000,000 |
| b. | Property Damage:
Each Accident | \$ 1,000,000 |
| c. | Combined Single
Limit of | \$ 1,000,000 |

4. Umbrella or Excess Liability:

- | | | |
|----|------------------|--------------|
| a. | Umbrella Policy: | \$ 2,000,000 |
|----|------------------|--------------|

5. Contractors Pollution Liability Coverage:
 - a. Pollution Liability Insurance: \$2,000,000
6. Contractor's Professional Liability Insurance:
 - a. Professional Liability Insurance: \$2,000,000

Note: The City of Portsmouth has Builders Risk coverage for its own losses.

ADDITIONAL INSURED

All liability policies (including any excess policies used to meet coverage requirements) shall include the City of Portsmouth, New Hampshire, Tighe & Bond, and Civilworks as named Additional Insured.

- A) The contractor's insurance shall be primary in the event of a loss.
- B) The Additional Insured endorsement must include language specifically stating that the entity is to be covered for all activities performed by, or on behalf of, the contractor, including the City of Portsmouth's general supervision of the contractor.
- C) City of Portsmouth shall be listed as a Certificate Holder. The City shall be identified as follows:

City of Portsmouth
Attn: Legal Department
1 Junkins Avenue
Portsmouth, NH 03801

GENERAL REQUIREMENTS

PART 1 - SUMMARY

1.1 SCOPE OF WORK

- A. The proposed work for this project includes existing seawall removal and the construction of a granite seawall as the base bid, with an alternative option to build a timber wharf as detailed on the plans and specifications.

1.2 LIMITS OF WORK

- A. The limit of work for this structure is limited to the structure itself and modifications, new construction as described in the documents.

1.3 SURVEY/CONSTRUCTION

- A. Survey control is required for layout and construction, by contractor.

1.4 INTENT OF CONTRACT

- A. The intent of the Contract is to provide for the construction and completion in every detail of the work described.

1. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the terms of the Contract.
2. The Contractor shall be required to conform to the intent of the plans and specifications. No extra claims shall be allowed for portions of the work not specifically addressed in the plans and specifications but required to produce a whole and complete project, such work will be considered subsidiary to the bid items.

1.5 INCIDENTAL WORK

- A. Incidental work items for which separate payment is not measured includes, but is not limited to, the following items:
 1. Public Safety
 2. Daily clean up
 3. Removing and resetting Existing signs if necessary.
 4. Restoration of property
 5. Cooperation with other contractors, abutters and utilities.
 6. Utility crossings, unless otherwise paid for.
 7. Steel and/or wood sheeting/bracing work platforms etc. as required.
 8. Accessories and fasteners or components required to make items paid for under unit prices or lump sum items complete and functional.

GENERAL REQUIREMENTS (continued)

1.6 ALTERATION OF PLANS OR OF CHARACTER OF WORK

- A. The Owner reserves the right, without notice to Surety, to make such alterations of the plans or of the character of the work as may be necessary or desirable to complete fully and acceptably the proposed construction; provided that such alterations do not increase or decrease the contract cost. Within these cost limits, the alterations authorized in writing by the Owner shall not impair or affect any provisions of the Contract or bond and such increases or decreases of the quantities as a result from these alterations or deletions of certain items, shall not be the basis of claim for loss or for anticipated profits by the contractor. The contractor shall perform the work as altered at the contract unit price or prices.

1.7 EXTRA WORK ITEMS

- A. Extra work shall be performed by the Contractor in accordance with the specifications and as directed, and will be paid for at a price as provided in the Contract documents or if such pay items are not applicable than at a price negotiated between the contractor and the Owner or at the unit bid price.
- B. If the Owner determines that extra work is to be performed, a change order will be issued.

1.8 CHANGE ORDERS

- A. The Owner reserves the right to issue a formal change order for any increase, decrease, deletion, or addition of work or any increase in contract time or price.
- B. The contractor shall be required to sign the change order and it shall be considered as part of the Contract documents.

1.9 FINAL CLEAN UP

- A. Before acceptance of the work, the contractor shall remove from the site all machinery, equipment, surplus materials, rubbish, temporary structures, barricades and signs. All parts of the work shall be left in a neat and presentable condition. On all areas used or occupied by the contractor, regardless of the contract limits, the bidder shall clean-up the beach, all sites and storage grounds.
- B. The items prescribed herein will not be paid for separately, but shall be paid for as part of the total contract price.

1.10 ERRORS AND INCONSISTENCY IN CONTRACT DOCUMENTS

- A. Any provisions in any of the Contract Documents that may be in conflict with the paragraphs in these General Requirements shall be subject to the following order of precedence for interpretation.
 - 1. Conflict Order of Precedence: (i.e.: "a" being most precedent)
 - a. Contract between Owner and GC
 - b. Special Provisions
 - c. General Provisions
 - d. Plans and Technical Specifications
 - e. Details on Drawings
 - f. Plan Drawings
 - 2. Omission Order of Precedence:
 - a. Something shown on the drawings, or required by the specifications, shall be included in the contract.

GENERAL REQUIREMENTS (continued)

PART 2 - CONTROL OF WORK

2.1 AUTHORITY OF ENGINEER

- A. All work shall be done under supervision of the City Engineer and to his satisfaction. The City Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of the work; all questions that may arise as to the interpretation of the plans and specifications; and all questions as to the acceptable fulfillment of the Contract by the Contractor.
- B. The City Engineer will have the authority to suspend the work wholly or in part for such periods as he may deem necessary due to the failure of the Contractor to correct conditions unsafe for workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for conditions considered unsuitable for the prosecution of the work, including unfit weather; or for any other condition or reason deemed to be in the public interest. The Contractor shall not be entitled any additional payments arising out of any such suspensions.
- C. The Owner reserves the right to demand a certificate of compliance for a material or product used on the project. When the certificate of compliance is determined to be unacceptable to the City Engineer the Contractor may be required to provide engineering and testing services to guarantee that the material or product is suitable for use in the project, at its expense (see Sample of Certificate of Compliance).

2.2 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

- A. If the City determines that non-conforming work substantially conforms to the Contract, the City may accept the non-conforming work provided that the City may require a credit to the City to be deducted from amounts otherwise due the Contractor. If the City and Contractor cannot agree to the amount of the credit, the work shall be unacceptable work.
- B. The Contractor shall remove, replace, or otherwise correct all unacceptable work as directed by the City at the expense of the Contractor, without cost or liability to the City.

GENERAL REQUIREMENTS (continued)

- C. Prior to Final Acceptance and upon written order by the City, the Contractor shall remove or uncover unauthorized work. After examination, the Contractor shall rebuild the uncovered work to a condition conforming to the Contract at the expense of the Contractor and without cost or liability to the City. Any delay arising from unauthorized work shall be an inexcusable delay.
- D. Prior to Final Acceptance and upon written order by the City, the Contractor shall uncover un-inspected work. After examination, the Contractor shall rebuild the uncovered work to a condition conforming to the Contract.
 - 1. If the City determines that the un-inspected work is acceptable, the uncovering, removing, and rebuilding will be paid for as extra work and any delay resulting there from shall be an excusable delay.
 - 2. If the City reasonably determines that the un-inspected work is unacceptable, the uncovering, removing, and rebuilding shall be at the Contractor's expense and any delay resulting there from shall be an inexcusable delay.

2.3 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPES

- A. The Contractor shall use every precaution to prevent injury or damage to wires, poles, or other property of public utilities; trees, shrubbery, crops, and fences along and adjacent to the right-of-way, all underground structures such as pipes and conduits, within or outside of the right-of-way; and the Contractor shall protect and carefully preserve all property marks until an authorized agent has witnessed or otherwise referenced their location.
- B. The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.
- C. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or as a result of the failure to perform work by the Contractor, the Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing rebuilding, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.
- D. The Contractor shall be responsible for the preservation of all trees and plants on the project which are not called to be removed. Any trees damaged by the Contractor's operations shall be repaired using approved tree dressing or paint in accordance with the appropriate provisions of Section 650-658 inclusive of the NHDOT Standard Specifications. Damaged trees must be replaced if so determined by the City Arborist, in his or her sole discretion.
- E. If the Contractor fails to repair, rebuild or otherwise restore such property as may be deemed necessary, the Owner, after 48 hours notice, may proceed to do so, and the cost thereof may be deducted from any money due or which may become due the Contractor under the contract.

GENERAL REQUIREMENTS (continued)

- F. It is the intent of the Parties that the Contractor preserve, to as great an extent as possible, the natural features of the site.
- G. Construction operations on this project may unearth or uncover cultural resources of a historic nature. If buried or obscured cultural materials are observed during vegetation removal, the encountered resource shall then be identified, recorded and an assessment made of the resource by a qualified archaeologist.

The right is reserved to the City and its authorized agents, including a qualified archaeologist and appropriate professions to enter upon the right of way for the purposes of investigating and/or excavating and removing such resources. The contractor shall cooperate with forces engaged in such work and may be required to work on another area of the project until the evaluation is completed.

2.4 MAINTENANCE DURING CONSTRUCTION

- A. The Contractor shall maintain the work during construction and until the project is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and workers to ensure that the structure is kept in satisfactory conditions at all times.

2.5 SAFETY PRECAUTIONS

- A. Upon commencement of work, the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions necessary to ensure the safety of employees on the site, other persons who may be affected thereby, including the public, and other property at the site or adjacent thereto.
- B. During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. At the end of each working day, the construction site shall be left in a safe and orderly manner. All materials and equipment on site that have not been incorporated into the work shall be placed in secured areas outside the traveled way and off private property, unless the Contractor has obtained agreements with said property owners for storage of materials and equipment. Portions of the work which are in progress shall be protected to avoid damage to the work and/or protect pedestrians and vehicles utilizing the project area.

2.6 PERMITS

- A. It will be the responsibility of the Contractor to obtain all permits required for the operation of equipment in, or on, all city streets and public ways.

GENERAL REQUIREMENTS (continued)

2.7 MAINTENANCE AND PROTECTION OF TRAFFIC

- A. The Contractor shall provide traffic flaggers as the City Engineer deems necessary for the direction and control of traffic within the street if necessary for the delivery of materials. The Contractor shall not park vehicles in the no parking areas in front of the site unless allowed by the City.
- B. The contractor shall be responsible to ensure the safe passage of pedestrians thru the work area at all times. At least one (1) pedestrian access shall be provided at all times.

BARRICADES AND WARNING SIGNS

- C. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public.
- D. The Contractor shall be held responsible for all damage to the work due to any failure of the warning devices to properly protect the work from the traffic, pedestrians or other causes.
- E. Areas closed to traffic shall be protected by effective barricades.
 - 1. Obstructions shall be illuminated during hours of darkness.
 - 2. Suitable warning signs shall be provided to control and direct traffic in a proper manner, as approved by the engineer.

2.8 LIMITATION OF OPERATIONS

- A. The Contractor shall not open up work to the prejudice or detriment of work already started.

PART 3 - TEMPORARY FACILITIES

3.1 STORAGE FACILITIES

- A. The Contractor shall not store materials or equipment in a public right-of-way beyond the needs of one working day. Equipment and materials shall be stored in an approved location.
- B. The Contractor shall protect all stored materials from damage by weather or accident and shall insure adequate drainage at and about the storage location.
- C. Prior to final acceptance of the work all temporary storage facilities and surplus stored materials shall be removed from the site.

GENERAL REQUIREMENTS (continued)

3.2 SANITARY FACILITIES

- A. The Contractor shall provide for toilet facilities for the use of the workers employed on the work.
- B. Temporary toilet facilities may be installed provided that the installation and maintenance conforms to all State and local laws, codes, regulations and ordinances governing such work. They shall be properly lit and ventilated, and shall be kept clean at all times.
- C. Prior to final acceptance of the work all temporary toilet facilities shall be removed from the site.

3.3 TEMPORARY WATER

- A. The Contractor shall make all arrangements with the local water department for obtaining water connections to provide the water necessary for construction operations and shall pay all costs.

PART 4 - MEASUREMENT AND PAYMENT

4.1 MEASUREMENT OF QUANTITIES

- A. This project will be bid based on the lump sum and unit price bid items provided in the Proposal Form

PARTIAL PAYMENTS

- B. Partial payments will be made on a monthly basis during the contract period. From the total amount ascertained as payable, an amount equivalent to ten percent (10 %) of the whole will be deducted and retained by the Owner through the one year warranty period.

4.2 SCOPE OF PAYMENT

- A. The Contractor will provide a schedule of values to be approved by the Engineer and used for purposes of partial payments.

GENERAL REQUIREMENTS (continued)

- B. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials and for performing all work under the contract in a complete and acceptable manner and for all risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof.
- C. The Contractor shall be liable to the Owner for failure to repair, correct, renew or replace, at his own expense, all damage due or attributable to defects or imperfections in the construction which defects or imperfections may be discovered before or at the time of the final inspection and acceptance of the work.
- D. No monies, payable under the contract or any part thereof, except the first estimate, shall become due or payable if the Owner so elects, until the Contractor shall satisfy the Owner that the Contractor has fully settled or paid all labor performed or furnished for all equipment hired, including trucks, for all materials used, and for fuels, lubricants, power tools, hardware and supplies purchased by the Contractor and used in carrying out said contract and for labor and parts furnished upon the order of said Contractor for the repair of equipment used in carrying out said contract; and the Owner, if he so elects, may pay any and all such bills, in whole or in part, and deduct the amount of amounts so paid from any partial or final estimate, excepting the first estimate.

4.3 COMPENSATION FOR ALTERED QUANTITIES

- A. Except as provided for under the particular contract item, when the accepted quantities of work vary from the quantities in the bid schedule the Contractor shall accept as payment in full, so far as contract items are concerned, at the original contract unit prices for the accepted quantities of work done. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the Bidder and subsequent loss of expected reimbursements therefore or from any other cause.
- B. Extra work performed will be paid for at the contract bid prices or at the price negotiated between the Owner and the Contractor if the item was not bid upon. If no agreement can be negotiated, the Contractor will accept as payment for extra work, cost plus 15% (overhead and profit). Costs shall be substantiated by invoices and certified payroll.

4.4 FINAL ACCEPTANCE

- A. Upon due notice from the Contractor of presumptive completion of the entire project, the City Engineer will make an inspection. If all construction provided for and contemplated by the contract is found complete to his satisfaction, this inspection shall constitute the final inspection and the City Engineer will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of the final inspection.
- B. If, however, the inspection discloses any work in whole or in part, as being unsatisfactory, the City Engineer will give the Contractor the necessary instructions for correction of such work and the Contractor shall immediately comply with and execute such instructions.

Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed. In such event, the City Engineer will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

GENERAL REQUIREMENTS (continued)

ACCEPTANCE AND FINAL PAYMENT

- C. When the project has been accepted and upon submission by the Contractor of all required reports, completed forms and certifications, the Owner will review the final estimate of the quantities of the various classes of work performed. The Contractor may be required to certify that all bills for labor and material used under this contract have been paid.
- D. The Contractor shall file with the Owner any claim that the Contractor may have regarding the final estimate at the same time the Contractor submits the final estimate. Failure to do so shall be a waiver of all such claims and shall be considered as acceptance of the final estimate. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

4.5 GENERAL GUARANTY AND WARRANTY OF TITLE

- A. The Contractor unconditionally warrants and guarantees that the project will be free from warranty defects for one year from the date of Final Acceptance. Final Acceptance includes receipt of all conforming closeout documentation.
- B. If the City discovers any warranty defects during the warranty period, the Contractor agrees to promptly perform all remedial work at no additional cost or liability to the City. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting there from which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The Owner will give notice of defective materials and work with reasonable promptness.
- C. Neither the final certification of payment nor any provision in the contract nor partial or entire use of the improvements embraced in this Contract by the Owner or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express or implied warranties or responsibility for faulty materials or workmanship.
- D. No material, supplies or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease purchase or other agreement by which an interest therein or in any part thereof is retained by the Seller or supplier. The Contractor shall warrant good title to all materials, supplies and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Owner free from any claims, liens or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this Contract shall have the right to a lien upon any improvements or appurtenances thereon.

GENERAL REQUIREMENTS (continued)

- E. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the

Contractor in the hands of the Owner. The provisions of this paragraph shall be inserted in all subcontractors and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

4.6 NO WAIVER OF LEGAL RIGHTS

- A. Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or be stopped from recovering from the Contractor or his Surety, or both, such overpayment as it may sustain by failure on the part of the Contractor to fulfill his obligations under the contract.

A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

- B. The Contractor, without prejudice to the Contract shall be liable to the terms of the Contract, shall be liable to the Owner for latent defects, fraud or such gross mistakes as may amount to fraud, and as regards the Owner's right under any warranty or guaranty.

4.7 TERMINATION OF CONTRACTOR'S RESPONSIBILITY

- A. Whenever the improvement provided for by the Contract shall have been completely performed on the part of the Contractor and all parts of the work have been released from further obligations except as set forth in his bond and as provided in Article 4.8 above.

PART 5 - SPECIAL REQUIREMENTS

5.1 PRECONSTRUCTION CONFERENCE

- A. A conference will be held at a specified location by the City, within ten (10) days after the awarding of the contract. At this time, the contractor will be required to submit a schedule and a plan showing project activities.
1. In addition to the contractor any subcontractors are required to attend.
 2. City and officials involved in the project will be present at this meeting.
- a) It is the purpose of this meeting to inform the various agencies of the proposed work schedule, and to give them the opportunity of discussing any difficulties and of offering suggestions to the Contractor concerning his proposed schedule in order that full cooperation may be reached.

GENERAL REQUIREMENTS (continued)

5.2 SCHEDULE OF OPERATIONS

- A. The above mentioned schedule of operations shall consist of a bar chart detailing the Work Plan/Sequence of Construction.

5.3 WORKING HOURS

- A. No work shall proceed on this project prior to the hour of 7:00 A.M. or after 6:00 P. M. (prevailing time) on any working day without written approval from the Engineer. The definition of work for this specification shall include the starting or moving of equipment, machinery, or materials. No Work Shall be completed on Saturday, Sundays or Holidays.
- B. Any day worked for four hours or more shall be considered a full working day.

5.4 NOTIFICATION OF RESIDENTS

- A. Residents shall be notified sufficiently in advance of any construction affecting the resident's driveway and sidewalk to allow adequate time for his removal of personal vehicles.

5.5 MATERIALS

- A. Materials shall meet the requirements specified for the various subsections of the specifications. Equals shall be approved by the Owner in writing only prior to the bid opening.

5.6 OCCUPATIONAL SAFETY AND HEALTH

- A. The Contractor is hereby advised that all work to be furnished to the City shall be performed with equipment, methods, and use of personnel in conformance with the pertinent Occupational Safety and Health Act requirements of the State of New Hampshire and with the regulations for construction as specified by the City of Labor and Occupational Safety and Health Administration (OSHA) as currently amended.

5.7 WASTE MATERIAL

- A. All waste material shall be removed from the site and the area left clean upon completion of work.
- B. Any equipment or structures damaged by the Contractor shall be repaired or replaced at no additional cost to the City.

5.8 QUALITY ASSURANCE

The Contractor shall be responsible at all times for maintaining quality assurance during performance of his work in accordance with the NHDOT Standard Specifications.

GENERAL REQUIREMENTS (continued)

PART 6 - DRAWINGS

6.1 SHOP DRAWINGS

- A. The Contractor shall submit working and detail drawings, well in advance of the work, to the City Engineer for review.
- B. The Contractor's drawings shall consist of shop detail, erection and other working plans showing dimensions, sizes and quality of material, details and other information necessary for the complete fabrication and erection of the pertinent work.
- C. The Contractor shall submit two sets of drawings to the City Engineer.
- D. Prior to the approval of the drawings, any work done or materials ordered for the work involved shall be at the Contractor's risk.
- E. One set of the drawings will be returned to the Contractor approved or marked with corrections to be made. After approval has been given, the Contractor shall supply the City Engineer with two sets of the revised detail working drawings.
- F. The City Engineer's approval of the Contractor's working drawings will not relieve the Contractor from responsibility for errors in dimensions or for incorrect fabrication processes, or from responsibility to complete the contract work.

6.2 RECORD DRAWINGS

- A. The Contractor shall keep daily records of all changes in the work, ties to all new service connections, and elevations of all inverts.
- B. Contractor shall submit red line Record Drawings of all work on paper and in electronic format acceptable to the Owner and Engineer upon project completion and prior to final payment.
- C. Final payment will not be made until the Engineer receives the marked-up set of plans.

SPECIAL PROVISION SECTION 101

DEFINITIONS AND TERMS

101.22 Commissioner shall mean City of Portsmouth Department of Public Works Director

101.39 Department shall mean the City of Portsmouth Department of Public Works

101.43 Engineer shall mean the City of Portsmouth Department of Public Works or their representative.

101.48 Executive Council shall mean the City of Portsmouth City Council.