

**City of Portsmouth, New Hampshire**

**REQUEST FOR PROPOSALS #33-16**

**Wendell Tomb Conservation**

The City of Portsmouth, New Hampshire (“Owner”) seeks Proposals from firms qualified for conservation of the Wendell tomb in Portsmouth, NH. Sealed Proposals, plainly marked **RFP #33-16, “Wendell Tomb Conservation”** on the outside of the mailing envelope, addressed to the Finance/Purchasing Department, City Hall, 1 Junkins Avenue, Portsmouth, NH 03801 will be accepted until **2 p.m. Thursday April 28, 2016.**

A pre-proposal meeting will be held **Monday, April 18, 2016 at 10:00 a.m.** Participants will meet at the Wendell tomb in the Pleasant Street Cemetery. All individuals or firms interested in submitting a proposal must attend.

The City of Portsmouth reserves the right to reject any or all proposals, to waive technical or legal deficiencies, to proceed or not to proceed with any proposal, or to negotiate without further process any contract as may be in the best interest of the City.

**GENERAL INFORMATION**

The City of Portsmouth (City) is seeking proposals from a firm or team of firms qualified for the conservation of the Wendell Tomb in the Pleasant Street Cemetery. The final scope of work and preservation approach will be a result of the City’s consultations with its partners, State agencies and best practices. The work to be performed includes removal of deteriorated and non-original components of the structure, and restoring the exterior surfaces to provide a water tight structure. The City is working with Strawberry Banke to provide archeological monitoring and temporary relocation of the human remains.

All project work will comply with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* and the American Institute for Conservation’s *Code of Ethics and Guidelines for Practice*.

Copies of the RFP are available on the City’s website <http://www.cityofportsmouth.com/finance/purchasing.htm>. Proposals must be received no later than **2:00 p.m. Thursday April 28, 2016.** Proposals received after the date and time indicated will be rejected.

All questions regarding this RFP should be directed to Lori MacGinnis, Purchasing Coordinator in writing, through email: [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com). Questions will be accepted until **4:30 p.m. Thursday April 21, 2016.** Answers to questions will be posted by **4:30 p.m. Monday April 25, 2016.** All questions, and their respective answers, raised during the RFP process will be available on-line at the Purchasing website <http://www.cityofportsmouth.com/finance/purchasing.htm>. Addenda will not be sent directly to proposers.

**BACKGROUND**

In 2013 the City of Portsmouth commissioned an assessment and existing conditions report of Cemetery properties by John B. Wastrom, a conservation mason and consultant from Rollinsford N.H., noted deficiencies in the City owned cemeteries and prioritized necessary repairs. This assessment is the basis for work to be executed in this Request for Proposals.

Work under the proposed contract will be done under the supervision of the City’s Project Manager with guidance from consulting parties to the City. All work will be inspected and approved by these parties prior to acceptance.

**SCOPE OF WORK**

Work under the proposed contract consists of:

- 1) Attendance at a Preconstruction meeting with the City to determine schedule and review means and methods.
- 2) Implementation of agreed upon conservation approach. Work tasks are anticipated to include:
  - A. Develop and submit a work plan for all project tasks, including soil removal.
  - B. Removal of non-original masonry using hand methods
  - C. Salvage of useable brick, iron door, granite door frame and inscription stones for reuse
  - D. Restoration of the original entrance with salvaged items
  - E. Removal of failed mortar from top of vault
  - F. Clean and repoint all brick, top and walls, with hydraulic lime
  - G. Parge the top with two coats of mortar made from lime and Rosedale Cement
- 3) Documenting the work in progress with photographs
- 4) The Contractor will meet with the City’s Project Manager periodically throughout the duration of work performance to review project progress. Meetings will be held on site.

**SELECTION PROCESS and CRITERIA**

Proposals are to be submitted in two parts, a technical proposal and a fee proposal. The Owner’s selection team shall review all technical proposals, and identify the three most qualified applicants. The selection and ranking shall be based on the criteria listed below. The order in which the criteria appear does not indicate the importance, ranking or weighting that will be used in the evaluation.

1. Qualifications of Proposal lead firm
2. Qualifications for proposed consultants and subcontractors.
3. Proposed approach to the project.
4. Successful experience performing similar projects.
5. Experience and availability of assigned staff to perform the services required by the Project.
6. Cost and projected timeline to accomplish the scope of work.

Fee Proposals from the 3 most qualified firms will then be opened and the final ratings of the most qualified firms will be determined. The Owner will negotiate with the highest ranked applicant on the tasks, staffing, schedule and a maximum not-to-exceed fee consistent with the applicant’s proposal and with what is considered fair and reasonable to the Owner.

Negotiations may be terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked applicant, and if necessary, the third ranked applicant. It is the City’s intention for work to commence as soon as agreed upon with the contractor awarded, and that this project will be completed by **end of the 2016 construction season**.

**RESERVATION OF RIGHTS**

By submitting a proposal, the applicant consents to the City undertaking such investigation as it deems in its best interest to investigate the firm’s qualifications. The submitting firm assumes all responsibility for any costs it incurs in preparing a response to this Request for Proposal.

The City of Portsmouth reserves the right to reject any and all proposals, to waive technical or legal deficiencies, and to accept any proposals that are deemed to be in the best interest of the city. The City reserves the right to amend this RFP by formal Addendum. All addenda will be posted on the City's website <http://www.cityofportsmouth.com/finance/purchasing.htm> as an addendum. Addenda will not be sent directly to proposers.

### **TECHNICAL PROPOSAL REQUIREMENTS**

1. The identity of the individual, firm or firms submitting this proposal. If a team is submitting this proposal, the proposal should specify which firm would act as the lead consultant for purposes of assuming contractual responsibility. If the consultant intends to subcontract any work required in the scope of services, the sub-contractor must be identified.
2. A resume with projects similar in scope and importance to the work outlined in this RFP, including the name and date of execution of each. Names and telephone numbers of the references for each of the projects are also required.
3. A narrative of the applicant's approach to carrying out the project, including alternate preservation approaches the City may consider in order to best meet the project goals.
4. The project schedule and definition of work to be carried out during each phase.
5. Any other information deemed relevant to the project, and which the consultant believes will further the competitiveness of the proposal.

The Technical Proposal must be submitted in a separate sealed envelope identified as "Technical Proposal". The project name, "**RFP 33-16 Wendell Tomb Conservation**" must be clearly marked on the envelope, along with the applicant's name and address. Conservators must submit one complete original and three (3) complete copies of both the Fee Proposal and Technical Proposal to:

City of Portsmouth Purchasing Department  
1 Junkins Ave  
Portsmouth, NH 03801

### **FEE PROPOSAL REQUIREMENTS**

The Fee proposal MUST be submitted in a separate sealed envelope identified as "Fee Proposal." Refer to the final page in this RFP for the Fee Proposal Form.

Project fees must include all costs and expenses to complete the scope of work. Please note that the City will provide water for project work. The City will not provide electric power.

### **SUBMITTALS**

The proposed contract will require the following submissions:

- 1) **Product Data**: Submit manufacturer's technical data for each product proposed in the treatment plan including recommendations for their application and use. Include test reports and certifications substantiating that products comply with requirements. Submit material safety data sheets for each product.
- 2) **Written Description**: Submit written schedule for each phase of conservation. Include items for coordination with the Owner and indication of how surrounding monuments and vital plantings will be protected. Describe materials and equipment to be used on site. Describe safety measures that will be taken to protect

visitors while the work is underway and to protect the fence components from damage while they are out of the ground.

3) Alternate Methods: Written approval from the City is required prior to substituting any materials or methods.

**FEE PROPOSAL FORM**

The undersigned hereby submits a price proposal to perform the services outlined in the City of Portsmouth RFP 33-16. Each item will be priced separately (below), and the base price will be the aggregate of all items. Prices include all labor, materials, supervision, insurances, overhead and profit. Put this in a sealed envelope separate from the technical proposal.

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

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

**FEE PROPOSAL**

**BASE BID**

Wendell Tomb Conservation

In Figures \$ \_\_\_\_\_

In Words \$ \_\_\_\_\_

Receipt of Addendum No. \_\_\_\_\_ Acknowledged by: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACT AGREEMENT**

**Wendell Tomb Conservation**

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_, 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. 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 shall mean the Facilities Project Manager, 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 – All work will be complete by \_\_\_\_\_.

ARTICLE IV - CONTRACT PRICE and PAYMENT- Upon final acceptance of the work and settlement of all claims, Owner shall pay the Contractor the Contract Price as shown in the Bid Proposal, subject to additions and deductions provided for in the Contract Documents.

ARTICLE V - RETAINAGE — There will be no retainage on this contract. One full payment will be made upon satisfactory completion of the project.

ARTICLE VI - LIQUIDATED DAMAGES - In event the Contractor fails to successfully complete the work within the specified contract time the Owner shall assess the Contractor liquidated damages in the amount of One Hundred Dollars (\$200.00) for each calendar day beyond the specified completion date. Liquidated damages shall be deducted from the Contract Price prior to final payment of the Contractor.

ARTICLE VII – 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 Bonds.
- 8.3 Insurance Requirements
- 8.4 Specifications
- 8.5 Any modifications, including change orders, duly delivered after execution of this Agreement.

In the event of a conflict, the Technical Specifications will govern.

ARTICLE VIII – 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 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 IX – 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 negligent performance of its obligations under this Contract. Contractor will defend all such actions with counsel satisfactory to Owner at its own expense, including attorneys’ fees, and will satisfy any judgment rendered against Owner.

ARTICLE X – 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.

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

ARTICLE XII – MISCELLANEOUS –

- A. 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.
- B. 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.
- C. 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.
- D. The laws of the State of New Hampshire shall govern this Contract without reference to the conflict of law principles thereof.
- E. Venue for any dispute shall be the Rockingham County Superior Court unless the parties otherwise agree.

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

CONTRACTOR:  
 BY: \_\_\_\_\_  
 NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_

CITY OF PORTSMOUTH, NH  
 By: \_\_\_\_\_  
 John P. Bohenko,  
 City Manager

**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.

Contractor shall require all subcontractors to be insured in commercially reasonable amounts.

AMOUNT OF INSURANCE

- A) Comprehensive General Liability:  
Bodily injury or Property Damage - \$2,000,000  
Per occurrence and general aggregate
- B) Automobile and Truck Liability:  
Bodily Injury or Property Damage - \$2,000,000  
Per occurrence and general aggregate  
Coverage requirements can be met with excess policies

Additionally, the Contractor shall purchase and maintain the following types of insurance:

- A) Full Workers Comprehensive Insurance coverage for all people employed by the Contractor to perform work on this project. This insurance shall at a minimum meet the requirements of the most current laws of the State of New Hampshire.
- B) Contractual Liability Insurance coverage in the amounts specified above under Comprehensive General Liability.
- C) Product and Completed Operations coverage to be included in the amounts specified above under Comprehensive General Liability.

Note: The City has available Builders Risk to cover its losses; contractor should evaluate coverage needs 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 as named Additional Insureds.

- 1) The contractor's insurance shall be primary in the event of a loss.
- 2) 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

CHANGE ORDER

Change Order Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_

Owner: CITY OF PORTSMOUTH, N.H

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 Completion Date: \_\_\_\_\_ days

Contract Price prior to this Change Order: \$ \_\_\_\_\_

Contract Time prior to this Change Order: \_\_\_\_\_ days

Net Increase or Decrease of this Change Order: \$ \_\_\_\_\_

Net Increase or Decrease of this Change Order: \_\_\_\_\_ days

Contract Price with all approved Change Orders: \$ \_\_\_\_\_

Contract Time with all approved Change Orders: \_\_\_\_\_ days

RECOMMENDED:

APPROVED:

APPROVED:

by \_\_\_\_\_  
Public Works Director

by \_\_\_\_\_  
City Finance

by \_\_\_\_\_  
City Manager

by \_\_\_\_\_  
Contractor



**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. Obligee, 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 \_\_\_\_\_ in accordance with drawings and specifications prepared by the Public Works Department, 680 Peverly Hill Road, 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 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:

(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:

\_\_\_\_\_ BY: \_\_\_\_\_

(Witness) (Principal) (Seal)

\_\_\_\_\_

(Surety Company)

\_\_\_\_\_ BY: \_\_\_\_\_

(Witness) (Title) (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 City 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 installation of \_\_\_\_\_

(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 \_\_\_\_\_

\_\_\_\_\_ does hereby acknowledge

that \_\_\_\_\_ (Contractor)

has on this day had, and received from the CITY OF PORTSMOUTH NEW HAMPSHIRE, final and completed payment for Wendell Tomb Conservation.

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.

IN WITNESS WHEREOF,

Contractor:

\_\_\_\_\_

By: \_\_\_\_\_

print name of witness: \_\_\_\_\_

Its Duly Authorized \_\_\_\_\_

Dated: \_\_\_\_\_

**MAINTENANCE BOND**

At the Owner's election, a maintenance bond may be substituted for retainage at the completion of the project.

If the Owner permits a maintenance bond, it shall be in the amount of Twenty Percent (20%) of the contract price with a corporate surety approved by the Owner. Such bond shall be provided at the time of Contract completion and shall guarantee the repair of all damage due to faulty materials or workmanship provided or done by the Contractor.

This guarantee shall remain in effect for a period of one year after the date of final acceptance of the job by the City of Portsmouth.

## GENERAL REQUIREMENTS

### PART 1 GENERAL

#### 1.1 INTENT OF CONTRACT

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

#### 1.2 CEMETERY EXCAVATION PROTOCOLS

- A. All excavation must be accomplished under the supervision of a State approved archeologist.
- B. In the event that hidden human remains are discovered, excavation will stop immediately and the police are to be notified.

#### 1.3 INCIDENTAL WORK

- A. Unless specifically excepted in the Bid or Technical Specifications, incidental work items for which separate payment is not measured includes, but is not limited to, the following items:
  - 1. Clean up
  - 2. Signs
  - 3. Mobilization
  - 4. Conservation of property
  - 5. Cooperation with other contractors, abutters and utilities.
  - 6. Accessories and fasteners or components required to make items complete and functional.

#### 1.4 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.
- B. Within these cost limits, the alterations authorized in writing by the Owner shall not impair or affect any provisions of the Contract or bond.
- C. Any 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.

- D. The Contractor shall perform the work as altered at the contract unit price or prices.

1.5 EXTRA WORK ITEMS

- A. Extra work shall be performed by the Contractor in accordance with the specifications and as directed.
- 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% (10% overhead and 5% profit). Costs shall be substantiated by invoices and certified payroll.
- C. Extra work 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.
- D. If the Owner determines that extra work is to be performed, a change order will be issued.

1.6 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.

1.7 FINAL CLEAN UP

- A. Before acceptance of the work, the Contractor shall remove from the site all machinery, equipment, surplus materials, rubbish, temporary buildings, barricades and signs.
- B. All parts of the work shall be left in a neat and presentable condition.
- C. On all areas used or occupied by the Contractor, regardless of the contract limits, the Bidder shall clean-up all sites and storage grounds.

1.8 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. Specifications will govern General Requirements.

PART 2 CONTROL OF WORK

2.1 AUTHORITY OF THE CITY 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:
  - 1. the quality and acceptability of materials furnished and work performed;
  - 2. the rate of progress of the work;
  - 3. the interpretation of the plans and specifications;
  - 4. 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
  - 1. due to the failure of the Contractor to correct conditions unsafe for workers or the general public;
  - 2. for failure to carry out provisions of the Contract;
  - 3. for failure to carry out orders;
  - 4. 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.
  
- C. The Contractor shall not be entitled any additional payments arising out of any such suspensions.
  
- D. 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.

2.2 PROTECTION AND CONSERVATION OF PROPERTY AND LANDSCAPES

- A. The Contractor shall be responsible for all damage or injury to property of any character:
  - 1. during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work,
  - 2. 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.
  - 3. 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.
  - 4. 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.



2.3 MAINTENANCE DURING CONSTRUCTION

- A. The Contractor shall maintain the work during construction and until the project is accepted. ALL AREAS WILL BE CLEANED AT THE END OF EACH WORK DAY.
- B. 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.

2.4 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.

2.5 PERMITS

- A. It will be the responsibility of the Contractor to obtain all permits required for the completion of the Project.

2.6 BARRICADES AND WARNING SIGNS

- A. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the building occupants and the public.
- B. Closed off areas shall be protected by effective barricades. Obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to control and direct traffic in a proper manner, as approved by the engineer.
- C. The Contractor will be held responsible for all damage to the work due to lack of adequate controlling devices.

2.7 TEMPORARY FACILITIES

A. STORAGE FACILITIES

- 1. 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.
- 2. The Contractor shall protect all stored materials from damage by weather or accident and shall insure adequate drainage at and about the storage location.
- 3. Prior to final acceptance of the work all temporary storage facilities and surplus stored materials shall be removed from the site.

B. WATER FACILITIES

- 1. The Owner shall provide the Contractor with reasonable access to water necessary for construction operations at the site.

2.8 TEMPORARY ELECTRICITY

- A. The Owner shall provide the Contractor with reasonable access to electrical power necessary for construction operations at the site.

PART 3 - MEASUREMENT AND PAYMENT

3.1 MEASUREMENT OF QUANTITIES (As may be applicable to the Project)

- A. All work completed under the contract will be measured according to the United States standard measure.
- B. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice. Unless otherwise stated all quantities measured for payment shall be computed or adjusted for "in place" conditions.

3.2 SCOPE OF PAYMENT

- A. The Contractor shall receive and accept compensation provided for work 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.
- B. 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.
- C. No monies, payable under the contract or any part thereof, 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.

3.3 PAYMENT PROCEDURES

- A. Submit final Application for Payment after completion of Project closeout procedures with release of liens and supporting documentation. Include consent of surety to final payment and insurance certificates.

3.4 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.

**PART 3 FINAL ACCEPTANCE AND FINAL PAYMENT**

**3.5 CITY INSPECTION**

- 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 the City Engineer's 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.

**3.6 GENERAL GUARANTY AND WARRANTY OF TITLE**

- A. 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. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom 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.
- B. 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.

- C. 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.

**3.7 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 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.

**3.8 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 Section 4.5 above.