

**DEPARTMENT OF PUBLIC WORKS ADDITONS
DESIGN BUILD SERVICES**

REQUEST FOR PROPOSALS

RFP # 34-24

**Karen S. Conard, City Manager
City of Portsmouth, NH**

Department of Public Works

CITY OF PORTSMOUTH, NH
DEPARTMENT OF PUBLIC WORKS

RFP#34-24 Design Build Services for DPW Additions

INVITATION

Sealed proposals plainly marked “RFP #34-24 DPW Additions Design Build Services” on the outside of the mailing envelope, as well as the sealed NON-PRICE PROPOSAL envelope and the sealed FEE PROPOSAL envelope, addressed to the Finance/Purchasing Department, City Hall, 1 Junkins Avenue 3rd Floor, Portsmouth, NH 03801 will be accepted until **2:00 p.m. on July 10, 2024**.

SCOPE OF SERVICES:

The City of Portsmouth’s Department of Public Works is requesting proposals from qualified firms. The purpose of this project is to construct two separate building additions which will provide work and storage space for the Vehicle Maintenance and Water Departments at the City of Portsmouth Department of Public Works (DPW) facility at 680 Peverly Hill Road.

Specifications may be obtained by visiting the Finance/Purchasing Department section of the City of Portsmouth website at www.cityofportsmouth.com/finance/purchasing.htm, or by contacting the Finance/Purchasing Department by email to purchasing@cityofportsmouth.com. Questions will be accepted until June 27, 2024 at 4:00 p.m.

Addenda to this bid document, if any, including written answers to questions, will be posted 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 vendors.

There will be a **mandatory pre-proposal meeting at 10:00 a.m. on June 25, 2024** on site at the 680 Peverly Hill Rd visitor's entrance. Proposals will be accepted only from attendees present at this meeting. All proposers will have an opportunity to ask questions at this meeting.

The City of Portsmouth reserves the right to reject any or all proposals, to waive technical or legal deficiencies, and to accept any proposal that it may deem to be in the best interest of the City.

NOTE: This project will be implemented contingent upon funding. It is anticipated that a contract will be signed soon after July 15, 2024.

RFP #34-24
REQUEST FOR PROPOSAL

DESIGN BUILD SERVICES FOR DPW ADDITIONS

INTRODUCTION

Sealed proposals plainly marked “RFP #34-24 DPW Additions Design Build Services” on the outside of the mailing envelope, as well as the sealed NON-PRICE PROPOSAL envelope and the sealed FEE PROPOSAL envelope, addressed to the Finance/Purchasing Department, City Hall, 1 Junkins Avenue 3rd Floor, Portsmouth, NH 03801 will be accepted until 2:00 p.m. on Wednesday July 10, 2024.

There will be a **mandatory pre-proposal meeting at 10:00 a.m. on June 25, 2024** on site at the 680 Peverly Hill Rd visitor's entrance. Proposals will be accepted only from attendees present at this meeting. All proposers will have an opportunity to ask questions at this meeting.

PROJECT DESCRIPTION AND SCOPE:

The purpose of this project is to construct two separate building additions, which will provide work and storage space for the Vehicle Maintenance and Water Departments at the City of Portsmouth Department of Public Works (DPW) facility at 680 Peverly Hill Road.

The Design Build Firm (“Contractor” or “Firm”) role will be to construct two steel building additions per the existing geotechnical conditions report, schematic information and building requirements provided in Attachments A, B, and C. Contractor will provide all labor, materials, tools and equipment, and design-build services necessary for design and construction of the project “DPW Additions Design Build Services” as defined by this Scope of Work (SOW). The Contractor may provide an alternative design to meet the same space needs if, based on their professional expertise and knowledge, they can provide an approach that will more effectively address the goals of this project. The contractor shall identify and explain any proposed modifications to the requested scope.

- Vehicle Maintenance Addition - This work will include the construction of an approximate 3,940 square foot addition on the north side of the existing maintenance building.
 - The proposal shall include all building and site work construction, including Mechanical, Electrical and Plumbing (MEP) as outlined in the Petersen Engineering memorandum, attached hereto as Attachment C. This work shall include exhaust removal for vehicles and welding activities, a new office, and a restroom. FF&E are not included in the base proposal cost.
- Utility Addition - This work will include building an approximate 4,460 square foot addition on the existing building's south side.
- This addition will be two-story and include additional vehicle storage and restrooms on the first floor

and new offices on the second floor. The proposal shall include all building and site work construction, including MEP as outlined in the Petersen Engineering narrative, including electrical preparations for solar photovoltaic roof panels. FF&E are not included in the base proposal cost.

The contractor shall complete the following Scope of Work:

- Review preliminary design documents and information provided in Attachments A, B and C.
- Perform additional investigations as necessary to complete the final design of the two building additions.
- Complete design, development, and construction documents for the proposed building additions. Provide required subconsultants as needed to complete the design documents.
- Construct building additions and site improvements as described in the final construction documents.
- Prepare as-built drawings depicting the final construction.

Reference Plans/Reports:

The City has included as Attachments the following conceptual and schematic plans, building requirements and geotechnical reports to provide information necessary to accomplish the design build project:

- **ATTACHMENT A** - Geotechnical Report by SW Cole
- **ATTACHMENT B** – DPW Additions Project 16122 by Altus Engineering
- **ATTACHMENT C** – MEP/FP Conceptual and Schematic Design Narrative

CITY ROLE:

The Public Works Director will appoint a Project Manager to administer the project and oversee the Contractor's work on this project. Representatives of the City's Public Works Department will review plans and other documents prepared by the Contractor, review and approve the submittals for equipment and materials, and review the constructability of any proposed recommendations.

DESCRIPTION OF THE CONSULTANT PROCUREMENT PROCESS:

Proposals shall be submitted in two separate parts- technical proposal and fee proposal.

Request for Proposals

Submittals at a minimum shall consist of the following:

1. Technical Proposal –

a. Description of Firm

Brief description of the firm including location of corporate headquarters and potential satellite office proposed to manage this project.

b. Statement of Project Requirements

Stated in succinct terms, the consultant's understanding of what is required by this Request for Proposal. Describe the Contractor's approach and technical plan for accomplishing the work listed herein. The Contractor is encouraged to elaborate and improve the tasks listed in this RFP document; however, the Contractor shall not delete any required scope task.

c. Scope of Services

Describe in narrative form the consultant's approach and technical plan for accomplishing the work listed herein. The consultant shall provide a detailed summary of how it will develop the required tasks in accordance with the concerns and criteria listed herein.

d. Team

Provide the names, with their resumes, of all professional members of the team. Each team member's educational and experience background and specific skills shall be included. The project manager and MEP subcontractor shall be clearly identified.

e. Relevant Experience

Provide the details of experience and past performance of the consultant on comparable projects for all utilities. This item should cover, at a minimum, the substantive nature of comparable projects. Consultants are required to give sufficient information on their experiences to permit the City to understand and verify the exact nature of the contributions made by the consultant to the projects listed.

f. Commitments

Provide a discussion of how the consultant will ensure adequate and timely completion of this project. A description of the consultant firm's overall capability and assurance that it can meet its commitment to successfully complete this project.

g. Project Schedule

Provide a project schedule itemized by construction activity for completing the scope of work.

h. References

Provide the name, title, locations, and phone number of persons who can substantiate the consultant's referenced experiences.

i. Costs

The consultant shall submit a total project cost itemized by CSI specification divisions, which include all design costs and General Conditions fees. Proposals shall be submitted in two parts as described in the Invitation on page 1.

- j. Comparable Projects
Description of three (3) similar design build projects and role of key staff in each project.

2. **Fee Proposal**

In a separate envelope labeled “**Fee Proposal RFP #34-24**” submit costs itemized by design task, General Conditions costs, and hourly rates for project staff, as outlined in the Fee Proposal Form attached as **Schedule 1**.

Submission of Written Qualifications

The Selection Committee will review and evaluate the written responses to the RFP. Consulting firms making proposals must respond in writing to all requirements of this RFP. Responses should reflect detailed considerations of the issues and opportunities presented by this specific project. Any other information deemed relevant by the proposing firm should be included after the items listed below.

Delivery of Proposals

Proposals received after the deadline will be rejected and returned to the proposing firm, unopened. Faxed or emailed proposals are NOT ACCEPTABLE.

Proposal Evaluation

Proposals will be evaluated according to the following:

1. The Contractor understands the City’s needs, the objectives, goals to be achieved, and the work involved in the project. - 20 pts
2. The Contractor’s ability, capacity, and skill to perform within the specified time limits.30 pts
3. The Contractor’s experience reputation, efficiency, judgement, and integrity. 20 pts
4. The Contractor’s proposal has been prepared per the instructions of the RFP, providing a project description and scope of work, schedule, list of similar projects, company profile, personnel to be assigned, and references. Client references should include the names of individuals and telephone numbers. 30 pts

Upon review of all responsive proposals using the criteria outlined above, the City may select up to three (3) firms to interview.

The City reserves the right to reject any or all proposals, to waive technical or legal deficiencies, to accept any proposal, and to negotiate such terms and conditions of the final contract as may be in the best interest of the City.

The City reserves the right to undertake such investigation as it deems necessary to evaluate the qualifications of the Contractor and to evaluate their submittal. Firms may be asked to submit releases as part of the investigation and review of qualifications. Failure to provide a release if requested will result in disqualification.

All concepts, designs, information, and cost-savings ideas that may be generated during the

selection process shall become the property of the City of Portsmouth.

The City, at its discretion, may select a Firm outright or select one or more finalist(s) for in-person and/or virtual interviews.

Selection

The fee proposal of the highest scoring Contractor shall be opened, and the proposer will be invited to negotiate a contract with the City of Portsmouth. Should the City and the selected firm not be able to reach an agreement, the City will then negotiate with the second highest scoring firm. The City reserves the right to stop the selection process at any time before the contract is awarded.

There will be no reimbursement to any Firm if the selection process is ended. The contract shall include among other items a requirement that the Consultant carry certain insurance policies naming the City as an additional insured. The successful proposer shall be supplied with the available site information.

Construction Documents

Upon selection, the highest-ranking Firm will be invited to enter into contract negotiations with the City. When the contract is executed by both parties, the Contractor will be instructed to commence providing the work outlined in the contract. Proposed Contract is attached as **Schedule 2**.

This project will be implemented contingent upon funding. It is anticipated that a contract will be signed soon after **July 15, 2024**.

All information, data, documents, photos, computer records, and other materials of any kind acquired or developed by the Contractor pursuant to this project shall be the property of the City of Portsmouth.

If the City is unable to reach an agreement with the highest-ranking firm, the City may enter negotiations with the next highest-ranking firm.

Contract addendum will be issued following City acceptance of construction documents to include construction costs defined by CSI Masterspec Divisions.

Nondiscrimination

Any entity that enters a contract for goods or services with the City of Portsmouth or any of its boards, agencies, departments and any recipient of City funds shall:

1. Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting, or demoting, matters of compensation, or any other employment-related decision or benefit on account of actual or perceived race, ethnicity, color, religion, national origin, gender, disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
2. Not discriminate in the performance of the contract on account of actual or perceived race, ethnicity, color, religion, national origin, gender, disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.

GENERAL CONDITIONS

I. 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.
 - 3. 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.

II. PRE-CONSTRUCTION SCHEDULE

- A. The selected Contractor shall be expected to begin work within two weeks of contract signing.
- B. Design Development Documents:
 - 1. DB Design Development Documents submitted no later than 42 calendar days (six weeks) from the date of submission.
- C. Construction Documents:
 - 1. Work on Construction Documents will begin after approval of the Design Development documents in writing from the City.
 - 2. The construction Documents shall address all comments received during the Design Development review.
 - 3. 100% Draft DB Construction Documents and written responses to the CoP Review Comments submitted no later than 28 calendar days (four weeks) after submission of receipt of the DB Design Development comments and authorization to proceed to CD.
 - 4. CoP Review completed no later than 14 calendar days after receipt of 100% Draft DB Construction Documents.
- D. Complete Stamped and Signed DB Construction Documents:
 - 1. Complete Stamped and Signed DB Construction Documents and written responses to the City 100% Draft DB Construction Document review comments submitted no later than 14 calendar days after receipt of CoP 100% Draft DB Construction Document review comments.
- E. Construction:
 - 1. After completion of the final stamped and signed Construction Documents, the CoP will issue an authorization to proceed with Construction.
 - 2. Contractor shall provide a proposed construction schedule and Schedule of Values for approval by the City.
- F. As-Built Drawings:
 - 1. As-Built Drawings completed no later than 21 calendar days after Project Completion.
 - 2. All Drawings shall be submitted to the City Project Manager.

III. PROJECT MANAGEMENT

It is expected that the Contractor shall establish a clear and consistent communication framework for the project's duration. This includes provision of Submittals for City review and approval of all materials and systems proposed.

The proposed scope of work should include an effective project management approach that includes regular project meetings and coordination between the Contractor and City staff.

If this proposal involves a team of Contractors, the lead firm and designated project manager shall be clearly identified.

IV. PROJECT MEETINGS

The Contractor shall anticipate meeting with the City at key submittal points during the design-build process, which at a minimum shall include:

1. A “kickoff” meeting that will identify program and building requirements to be incorporated into the Design Development plans.
2. To present the Design Development Drawings for review and comment.
3. To present the Construction Documents for review and comment.
4. A Pre-Construction Meeting
5. Throughout construction at appropriate intervals for the stage of construction to discuss project work, schedules, and costs.
6. For Construction Close-out, including project punch list and final close out.

The Contractor shall be responsible for recording the events of these meetings and preparing minutes with a summary of action items for distribution. The shall take the lead in setting project meeting dates with the City.

V. EXISTING CONDITIONS

Conduct field visits as necessary during the design phase and meet as needed with the City Engineer or his/her designee on site to review and discuss project design issues. The Contractor will confirm that existing conditions are as described in the reference plans provided above. The DPW facility is active 24 hours a day, seven days a week. The City’s appointed Project Manager will coordinate DPW activities with the Contractor activities to facilitate the work of both.

VI. PERMITTING

The Contractor is to obtain all necessary permits for the work. The City will waive any and all municipal permit fees.

VII. DESIGN DEVELOPMENT

A. Preliminary Design Plans & Opinion of Cost

1. Based on the information received from the City including Exhibits A, B, & C and any supplemental information provided, the Contractor will develop Design Development (DD) plans and cost estimates for the two building additions and site work.
- B. The DD plans shall address mechanical, electrical, and plumbing and life safety requirements for the proposed work.
- C. The preliminary plan shall address
 - a. Grade and drainage design at the facility additions sites, and
 - b. Identify any coordination with utilities necessary to construct the project.
- D. FF&E are not included in the DD plans or cost estimates. Design Development architectural and engineering plans shall be of sufficient quality and size to provide an estimate of project cost.
- E. The Contractor will provide proposals to supply and install the FF&E items listed on the architectural plans and for the complete fit-up of the two additions. The City will decide what FF&E items will be included in the Final Construction Documents based on available funding.
- F. After completion of the DD submittal, the Contractor and City will meet to review the plans and estimates and provide comments which will be the basis of design for the Construction Documents.
- G. The Contractor shall have written approval from the Director of Public Works to proceed with Construction Documents (CD).
- H. Construction Documents - Recommend the following text:
 1. After completion of the Design Development plans and comments by the City, the Contractor will develop construction plans, specifications and revised final cost estimates for the project and present them in the 100% DB Construction Documents for final review and approval by the City and make any needed revisions.
- I. The consultant shall electronically submit original construction plans, estimate and specifications in addition to 5 sets of bound plans and a Project Manual containing all technical information at a level of detail which can be used for an Operations and Maintenance Manual to the City Engineer or his/her designee.
- J. A Professional Architect/Engineer licensed in the State of New Hampshire shall stamp all plans.

VIII. CONSTRUCTION DOCUMENTS

After completion of the Design Development plans and comments by the City, the Contractor will develop Construction plans, specifications and revised final cost estimates for the project and present them in the 100% DB Construction Documents for final review and approval by the City and make any needed revisions.

A Professional Architect/Engineer licensed in the State of New Hampshire shall stamp all plans

IX. INCIDENTAL WORK

- A. Incidental work items for which separate payment is not measured includes, but is not limited to, the following items:
 - 1. Maintaining building occupant right of way
 - 2. Daily clean up after job
 - 3. Safety Signage
 - 4. Mobilization/Demobilization
 - 5. Restoration of property
 - 6. Cooperation with other contractors, utility companies and DPW
 - 7. Accessories and fasteners or components required to make items paid for under unit prices or lump sum items complete and functional

X. ALTERATION OF PLANS OR OF CHARACTER OF WORK

- A. The City reserves the right, without notice to Contractor, 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 City 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.
- C. The contractor shall perform the work as altered at the contract unit price or prices.

XI. CHANGE OF CONTRACT PRICE

- A. The contract price may only be changed by a change order.
- B. The City will issue a formal change order for any increase, decrease, deletion, or addition of work or any increase in contract time or price.
- C. The Contractor shall be required to sign the change order and it shall be considered as part of the contract documents.
- D. An adjustment in the contract price will be determined as follows:
 - 1. Where the work involved is covered by the original the contract documents
 - 2. Where the work involved is not covered by original contract documents, then by a mutually agreed lump sum; or
 - 3. Where the work involved is not covered by the original contract documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the cost of the work plus a contractor's fee for overhead and profit [QUERY IF THIS IS THE FORMULA WE WANT. IT WAS PULLED FROM SOMETHING ELSE.]

E. Contractor's Fee: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the cost of the work:

F. Payroll Costs: Payroll costs for employees in the direct employment of Contractor in the performance of the Work, the Contractor's fee will be 15 percent.

1. If any subcontract provides that the Subcontractor is to be paid based on cost of the work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee, the Contractor's fee will be 5 percent.

2. No fee will be payable based on costs for the following:

1. Costs of special consultants (including engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services related to the Work.
2. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
3. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

G. Amount of Credit: The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in cost of the work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in cost of the Work; and

1. When both additions and credits are involved in any one change or change proposal, costs shall be substantiated by invoices and certified payroll. The adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories:

- i. payroll costs
- ii. incorporated materials and equipment costs
- iii. subcontract costs
- iv. special consultants' costs

XII. AUTHORITY OF ENGINEER

A. All work shall be done under supervision of the City Engineer or his/her designee and to their satisfaction.

1. The Engineer will decide all questions which may arise as to the quality and a acceptability of materials furnished, and work performed and as to the rate of progress of the work.
 2. 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 Engineer will have the authority to suspend the work wholly or in part for such periods as the Engineer may deem necessary.
1. for 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.
 5. for any other condition or reason deemed to be in the public interest. The Contractor shall not be entitled to any additional payments arising out of any such suspension.
- C. The City reserves the right to demand a certificate of compliance for a material or product used on the project.
1. When the certificate of compliance is determined to be unacceptable to the 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 their expense.

XIII. PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPES

- A. 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.
1. Said responsibility will not be released until the project shall have been completed and accepted.
- B. When or where any direct or indirect damage or injury is done to public or private property.

1. by or on account of any act, omission, neglect, or misconduct in the execution of the work,
 2. because 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.
 3. If the Contractor fails to repair, rebuild, or otherwise restore such property as may be deemed necessary, the City, 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.
- C. The Contractor shall use every precaution to prevent injury or damage to
1. wires, poles, or other property of public utilities,
 2. trees, shrubbery, vegetation, and fences along and adjacent to the right-of-way,
 3. all underground structures such as pipes and conduits, within or outside of the right-of-way.
- D. The Contractor shall protect and carefully preserve all property marks until an authorized agent has witnessed or otherwise referenced their location.

XIV. MAINTENANCE DURING CONSTRUCTION

- A. The Contractor shall maintain the work during construction and until the project is accepted.
1. This maintenance shall constitute continuous and effective work done daily, with adequate equipment and workers to ensure the structure is always in satisfactory condition.

XV. 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.

XVI. DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

- A. Notice by Contractor: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely is materially inaccurate,
 2. is of such a nature as to require a change in the drawings or specifications,
 3. differs materially from that shown or indicated in the contract documents; or

4. is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract documents.

- B. Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify City and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- C. Engineer's Review: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for City to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Contract Documents; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to City regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise City in writing of Engineer's findings, conclusions, and recommendations.
- D. City's Statement to Contractor Regarding Site Condition: After receipt of Engineer's written findings, conclusions, and recommendations, City shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- E. Early Resumption of Work: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or City's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

XVII. HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE

- A. Reports and Drawings: **Attachments A and B** identify:
 - 1. those reports known to City relating to hazardous environmental conditions that have been identified at or adjacent to the Site;
 - 2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 - 3. Technical Data contained in such reports and drawings.
- B. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- C. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately:
 - 1. secure or otherwise isolate such condition;
 - 2. stop all Work in connection with such condition and in any area affected thereby and
 - 3. notify City and Engineer (and promptly thereafter confirm such notice in writing).
- E. City shall promptly consult with Engineer concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with the Engineer, City shall take such actions as are necessary to permit City to timely obtain required permits and provide Contractor the written notice required.
- F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then City may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.
- G. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either:
 - 1. specifying that such condition and any affected area is or has been rendered safe for the resumption of work, or
 - 2. specifying any special conditions under which such Work may be resumed safely.
- H. If City and Contractor cannot agree as to a change of contract times, as a result of such work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of City's written notice regarding resumption of Work, Contractor may submit a Change Proposal, or City may impose a set off.
- I. If, after receipt of such written notice, Contractor does not agree to resume such work based on a reasonable belief it is unsafe or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in the Contract documents. City may have deleted portion of the Work performed by City's own forces or others.

- J. To the fullest extent permitted by Laws and Regulations, City shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Conditions:
1. was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance, or identified in the Contract Documents to be included within the scope of the Work, and
 2. was not created by the Contractor or by anyone for whom Contractor is responsible. Nothing obligates City to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

XVIII. SAFETY AND PROTECTION

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground construction.
- D. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity

directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense.

1. except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Engineer or anyone employed by any of them, or anyone or whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of City's safety programs, if any. Any of City's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform City and Engineer of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to City and Contractor that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

XIX. HAZARD COMMUNICATION PROGRAMS

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

XX. EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss.

B. Contractor shall give Engineer prompt written notice if Contractor believes that any

significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required because of Contractor's response to an emergency. If the Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order will be issued.

XXI. FORCE MAJEURE

- A. The Party affected by **Force Majeure** shall not assume any liability under this Agreement. However, subject to the Party affected by **Force Majeure** having taken its reasonable and practicable efforts to perform this Agreement, the Party claiming for exemption of the liabilities may only be exempted from performing such liability as within limitation of the part performance delayed or prevented by **Force Majeure**. Once causes for such exemption of liabilities are rectified and remedied, both parties agree to resume performance of this Agreement with their best efforts.

XXII. 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.

XXIII. TEMPORARY FACILITIES

- A. Storage Facilities:

1. Equipment and materials shall be stored in a location approved by the City.
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. Sanitary Facilities:

1. The Contractor shall provide toilet facilities for the use of the workers employed on the work.

- C. Water Facilities:

1. The City shall provide the Contractor with reasonable access to water facilities for construction operations.

- D. Temporary Electricity:

1. The City shall provide the Contractor with reasonable access to electrical power necessary for construction operation at the site.

XXIV. PAYMENT AND GUARANTEES

- A. General

1. The Contractor shall be liable to the City 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.

2. No monies, payable under the contract or any part thereof, shall become due or payable if the City so elects, until the Contractor shall satisfy City that the Contractor has fully settled or paid for:

- a. all labor performed or furnished
- b. all equipment hired, including trucks,
- c. all materials used,
- d. all fuels, lubricants, power tools, hardware and supplies purchased by the Contractor and used in carrying out said contract
- e. all labor and parts furnished upon the order of Contractor for the repair of equipment used in carrying out this contract.

3. The City, if they so elect, may pay all such bills, in whole or in part.

4. Any extra work performed will be paid for at the price negotiated between the City and the Contractor.

B. Partial Payments

1. Partial payments will be made on a monthly basis during the contract period based on the percentage of work completed.

a. From the total amount ascertained as payable, an amount equivalent to ten percent (10%) of the whole will be deducted and retained by the City until such time as the work is 50% complete.

b. Provided that the Contractor has satisfied City regarding the quality and timeliness of the work and provided further that there is no specific cause for withholding additional retainage, no further amount will be withheld.

2. Upon substantial completion of the work, the amount of retainage shall be reduced to 2% of the total contract value plus any additional retainage amounts required by the City based on the City's estimate of the fair value of any remaining punch list items.

a. Any additional retainage held for punch list items shall be held until such time as all items on the punch list are repaired or completed and City has accepted the work.

b. The final 2% of retainage shall be held until the warranty period has expired or a maintenance bond is supplied in accordance with the Contract Documents.

XXV. FINAL ACCEPTANCE

A. Upon due notice from the Contractor of the presumptive completion of the entire project, the City and City Representative will make an inspection.

1. If all construction provided for and contemplated by the contract is found complete to their satisfaction, this inspection shall constitute the final inspection and the City or City Representative will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of the final inspection.
 2. If, however, the City Representative's inspection discloses any work in whole or in part, as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of such work, and the Contractor shall immediately comply with and execute such instructions.
- B. 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 an event, the City Representative will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.
 - C. When the project has been accepted and upon submission by the Contractor of all required reports, completed forms, affidavits, releases and certifications, the City will make the final payment.

XXVI. GENERAL GUARANTY AND WARRANTY OF TITLE

- A. Neither final payment nor any provision in the contract nor partial or entire use of the improvements embraced in this Contract by the City 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.
- B. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting from which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The City will give notice of defective materials and work with reasonable promptness.
- C. 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.
- D. 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 City free from any claims, liens or charges.
- E. 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.
- F. 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 City.
- G. 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.

- H. At completion of project, Contractor to provide to City, written guarantee of one (1) year workmanship warranty.

XXVII.NO WAIVER OF LEGAL RIGHTS

- A. Upon completion of the work, the City will expeditiously make a final inspection and notify the Contractor of acceptance.
- B. Such final acceptance, however, shall not preclude or stop the City from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the City be precluded or be stopped from recovering from the Contractor or its Surety, or both, such overpayment as it may sustain by failure on the part of the Contractor to fulfill its obligations under the contract.
- C. A waiver on the part of the City of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.
- D. The Contractor, without prejudice to the Contract shall be liable to the terms of the Contract, shall be liable to the City for latent defects, fraud or such gross mistakes as may amount to fraud, and as regards the City's right under any warranty or guaranty.

XXVIII.INSURANCE REQUIREMENTS:

- A. 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 the Contractor or by anyone directly or indirectly employed by the Contractor.
- B. Amount of Insurance
 - 1. Comprehensive General Liability: Bodily injury or Property Damage – \$2,000,000 Per occurrence and general aggregate
 - 2. Automobile and Truck Liability: Bodily Injury or Property Damage – \$2,000,000 Per occurrence and general aggregate
 - 3. Professional liability insurance for errors and omissions - \$2,000,000
 - 4. Coverage requirements can be met with excess policies.
- C. Additional Insurance:
 - 1. 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.
 - 2. Contractual Liability Insurance coverage in the amounts specified above under Comprehensive General Liability.
 - 3. Product and Completed Operations coverage to be included in the amounts specified above under Comprehensive General Liability.
 - 4. Builder's Risk in the amount of the contract.

XXIX.ADDITIONAL INSURED

- A. All liability policies (including any excess policies used to meet coverage requirements) shall include the City of Portsmouth, New Hampshire as named Additional Insured.

1. The contractor's insurance shall be primary in the event of a loss.
2. 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.
3. 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

XXX.INDEMNIFICATION OF CITY

- A. Contractor shall defend, indemnify and hold harmless the City of Portsmouth and its agents, officials, and employees from and against any and all claims, actions, damages, and losses incurred by Portsmouth arising out of or relating to Contractor's negligence or breach of their obligations or warranties set forth in this Agreement, except to the extent such claims, actions, damages or losses are caused by the negligent acts or omissions of Portsmouth.