

**CONTRACT DOCUMENTS AND SPECIFICATIONS**

**For**

**ON-CALL SERVICES  
WATER/WASTEWATER  
CONSTRUCTION**

**RFP #41-24**

**Karen S. Conard, City Manager**

CITY OF PORTSMOUTH, NH  
DEPARTMENT OF PUBLIC WORKS

ON-CALL SERVICES  
for  
Water/Wastewater Construction Services

REQUEST FOR PROPOSALS  
RFP# 41-24  
INVITATION

**Sealed Requests for Proposals, plainly marked “RFP #41-24 P Water/Wastewater Construction Services” on the outside of the mailing envelope**, addressed to the Finance/Purchasing Department 3<sup>rd</sup> floor, City Hall, 1 Junkins Avenue, Portsmouth, NH 03801 will be accepted until **2:00 p.m. on April 29, 2024**.

**Scope of Work:**

The City of Portsmouth is requesting proposals for qualified construction contractors on an on-call and as needed basis to support the water and wastewater divisions.

The City of Portsmouth is soliciting proposals from contractors who wish to provide construction services for the City of Portsmouth on an as needed and on-call basis. Work would be performed at the City’s water treatment plant, eight well pumping stations, two wastewater treatment facilities, and twenty (20) wastewater pumping stations. The purpose of this Request for Proposal (RFP) is to identify a short list of firms to provide on-call services for the next three to five years.

Specifications may be obtained by visiting the Finance/Purchasing Department section of the City of Portsmouth website at [www.cityofportsmouth.com/finance/purchasing.htm](http://www.cityofportsmouth.com/finance/purchasing.htm). Written questions addressed to [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com) are due by **April 18, 2024 @ 4:30 p.m.** Addenda to this proposal, if any, including written answers to questions, will be posted on the City of Portsmouth website by **April 22, 2024 @ 4:30 p.m.** under the project heading.

The City of Portsmouth 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 any proposal that may be in the best interest of the City.

Requests for additional information should be emailed to [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com).

## **REQUEST FOR QUALIFICATIONS FOR ON-CALL SERVICES**

### **INTRODUCTION AND SCOPE OF SERVICES:**

The City of Portsmouth is soliciting Proposals from contractors who wish to provide water and wastewater facility construction services for the City of Portsmouth on an as needed and on-call basis. Work will be performed at the City's water treatment plant, two water booster pumping stations, eight well buildings, two wastewater treatment facilities and twenty (20) wastewater pumping stations. The need for these services is a result of necessary system improvements that are beyond the general capability or availability of manpower that the City's maintenance staff is allotted. The City will select highly qualified Contractors who can provide a quick response, quality end product, and a high level of customer service performance in all work efforts. The Contractor will be expected to work with the City's staff in a professional manner. The Contractor may be included in the planning and design phase if necessary.

The services are to be provided on an as needed and request basis. They include, but are not limited to, repairs and/or replacement of pumps, screens, valves, piping, meters, blowers, process equipment, buildings, tanks, structures, etc. Examples of such services may include: (1) replacement of a single or multiple dry well centrifugal pumps purchased by the City (2) disassembly, repair, and reassembly of a damaged wastewater screen (3) installation of new piping in a pump station for a bypass connection (4) replacement of interior suction and force main piping at a pumping station or in the wastewater treatment facility (5) replacement of a large diameter valve and valve actuator and (6) miscellaneous concrete work to support modification to process equipment.

It is the City's intention to create a limited roster of up to five qualified Contractors who are interested in performing such work and to establish in advance the rate of compensation for such services. The Task Order Contract for selected Contractors is attached as Appendix A included with this proposal package.

Contractors placed on the roster will generally be ranked in order qualifications. The City reserves the right, however, to take into account responsiveness and past performance in determining which Contractor will be contacted first and given the opportunity to perform work as needed on a Task Order Contract (provided as an appendix in the full request for proposals). The City will proceed down the roster as necessary to meet the needs of the City.

By seeking proposals from Contractors, the City does not imply that it will utilize the Contractor's services any guaranteed number of times over the course of the year.

The City of Portsmouth shall retain the right to remove any Contractor from the roster if Contractor fails to perform satisfactorily under the Task Order Contract. Failure will include: not performing work in a professional manner within the demands and time constraints established by the City for the service.

## **GENERAL INSTRUCTIONS:**

### **A. Submission:**

Submit five copies of Contractor's proposal in 8-1/2" x 11" format by **2 p.m. on April 29, 2024**. Proposals shall include all required information and a fully completed Fee Proposal Form. Copies shall be mailed, or hand delivered clearly marked "RFP 41-24 On-Call Services for Water Wastewater Construction Services" to:

Finance/Purchasing Department  
CITY OF PORTSMOUTH  
1 Junkins Avenue  
Portsmouth, NH 03801  
Phone: 610-7227  
Email: [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com)

### **B. Questions:**

Written questions pertaining to all issues associated with this RFP shall be directed to the Purchasing Department via E-mail at [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com) by **4:30 p.m. on April 18, 2024**.

### **C. Submittal Requirements:**

This RFP is intended to provide interested Consultants with an opportunity to demonstrate their ability to perform the required tasks. The content of the proposal should respond to information presented in this RFP, and should adhere to the following format:

#### **1. Qualifications:**

On company letterhead state the full name and address of your organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work. Briefly describe the history of the firm and the types of services provided. Identify areas of technical and skilled trade expertise which make the firm qualified for this work. Provide contact information.

#### **2. Employees:**

Identify the individuals or classes of employees that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the type of work anticipated. Resumes or qualifications (maximum of one page per individual) may be submitted in this section. Qualifications and capabilities of any sub-consultants must also be included.

#### **3. Proposed Work Plan:**

Provide a written summary of your general approach to responding to City requests for work. The summary should include availability to perform task-based work, time needed to mobilize, turn-around time to prepare fee estimates for individual tasks, and ability to perform on-call emergency work, if needed. As part of this section of the proposal, Contractor should identify the amount of time needed

to visit a proposed work site after being notified by the City, time needed to prepare a proposal, and after acceptance of proposal by the City, the time needed to mobilize and begin work.

**4. Relevant Experience:**

Provide the details of the Contractor’s last three relevant projects and past performance of the Contractor and its team members on comparable work. This item should cover, at a minimum, the substantive nature of comparable projects. Contractors are required to give sufficient information of their experiences to permit the City to understand and verify the exact nature of the contributions made by the Contractor to the projects listed.

**D. Selection Criteria:**

**EVALUATION CRITERIA**

Proposals will be evaluated and ranked according to the following:

1. Responsiveness to submission requirements. 20 points
2. Professional qualifications of firm. and employees 30 points
3. Project approach as demonstrated by Proposed Work Plan. 20 points
4. Previous relevant experience. 30 points

The City may elect to interview one or more firms to assist in the ranking process. The City seeks to identify up to three firms for its on-call list.

**EVALUATION COMMITTEE RIGHTS / RULES OF CONDUCT**

- A. The evaluation committee expressly reserves the right to:
  - Reject any and all proposals without penalty.
  - Waive all technicalities, irregularities and deviations from this request for proposals.
  - To decide whether a proposal does or does not substantially comply with the requirements of the RFP.
  - To be the final judge as to which is the best overall proposal, and to award a contract to the Contractor whose proposal it considers to be in the best interest to the City.
- B. It is the City’s intent to award a minimum of three (3) contractors to be available on an on-call basis as services are needed.
- C. The evaluation committee reserves the right to award a contract without discussion or negotiation if it determines that such an award will result in fair and reasonable prices and

would be the most advantageous to the City.

- D. If the awarded Contractor refuses to enter into a contract, their proposal will be rejected.
- E. The evaluation committee will evaluate all proposals against the evaluation criteria listed in this request for proposal and determine which Contractor will best meet the needs of the City.
- F. If a contract acceptable to the committee cannot be executed with the top Contractor, the committee may eliminate that Contractor from further consideration. The committee may then proceed to conduct negotiations and planning sessions with the Contractor next preferred among the Contractors who have not been eliminated. Such processes will be continued until either an acceptable contract is executed, or all proposals have been eliminated.
- G. The City reserves the right to negotiate simultaneously with more than one Contractor.

**E. Reservation of Rights:**

The City of Portsmouth reserves the right, and at its sole discretion exercise, the follow rights and options with respect to this Request for Qualifications:

1. To reject any and all proposals;
2. To issue additional solicitations for proposals and/or amendments to the RFP;
3. To waive any irregularities in proposals received after notification to proposers affected;
4. To select any proposal as the basis of negotiations of a contract, and to negotiate with proposers for amendments or other modifications to their proposals;
5. To conduct investigations with respect to the qualifications of each proposer;
6. To exercise at its discretion and apply its judgment with respect to any aspect of this Request for Proposals, the evaluation of proposals, and the negotiation and award of any contract;
7. To enter into an agreement for only portions, or not to enter into an agreement for any, of the services contemplated by the proposals;
8. To select the proposal that best satisfies the interests of the City and not necessarily on the basis of price or any other single factor.

If the City of Portsmouth selects a proposal, a formal written contract shall be entered into between the City and the successful proposer. The proposal or any part thereof, submitted by the successful proposer, may be attached or become part of the contract. The contract shall not become binding until signed by both parties and approved by the City Manager.

When the contract is executed by both parties, the Consultant will be instructed to commence providing the work outlined in the contract. All information, data, documents, photos, computer records, and other materials of any kind acquired or developed by the consultant pursuant to this project shall be the property of the City of Portsmouth.

**F. Indemnification of City:**

Contractor shall defend, indemnify, and hold harmless the City, 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 its 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.

**G. Nondiscrimination:**

Any entity that enters a contact for goods or services with the City of Portsmouth or any of its boards, agencies and 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.

**ADDITIONAL INFORMATION**

Requests for additional information should be directed to [purchasing@cityofportsmouth.com](mailto:purchasing@cityofportsmouth.com).

# APPENDIX A

## Fee Proposal Sheet Water/Wastewater On-Call Construction Services

The proposing party hereby offers to provide the wastewater and water treatment facilities maintenance, repair, and installation services, on an on-call basis, as detailed by RFP# 41-24 for the following prices/discounts:

### Labor Rates (Monday - Friday, 7 AM -4 PM):

- a. Project Manager \$ \_\_\_\_\_
- b. Superintendent \$ \_\_\_\_\_
- c. Foreman \$ \_\_\_\_\_
- d. Mechanic \$ \_\_\_\_\_
- e. Millwright \$ \_\_\_\_\_
- f. Welder \$ \_\_\_\_\_
- g. Master Electrician \$ \_\_\_\_\_
- h. Journeyman Electrician \$ \_\_\_\_\_
- i. Laborer \$ \_\_\_\_\_
- j. (Other -specify) \$ \_\_\_\_\_
- k. (Other -specify) \$ \_\_\_\_\_

### Labor rate multiplier for:

- 1. Monday - Friday, 4:01 PM - 6:59 AM: \_\_\_\_\_
- 2. Holidays and Weekends: \_\_\_\_\_

### Repair Parts Discount:

Percentage (%) Discount from Manufacturer's List Price: \_\_\_\_\_

### Equipment/Systems Discount:

Percentage (%) Discount from Manufacturer's List Price: \_\_\_\_\_

**TASK ORDER CONTRACT**

THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between the City of Portsmouth, New Hampshire with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter "Owner") and \_\_\_\_\_, with a principal place of business at \_\_\_\_\_ ("Contractor").

**ARTICLE I - WORK** - The Contractor shall perform all Work as specified in the attached Scope of Work and Schedule dated \_\_\_\_\_ and attached as Exhibit A. The Contractor shall provide, at its expense, all labor, materials, equipment and incidentals as may be necessary for the expeditious and proper execution of the Work.

**ARTICLE II - CONTRACT TIME** - The work will commence immediately and be completed as described in the Scope of Work and Schedule.

**ARTICLE III - ENGINEER** - The City Engineer or his authorized representative will act as engineer in connection with completion of the Work.

**ARTICLE IV - CONTRACT PRICE** - Owner shall pay Contractor for performance of the Work in accordance with the following:

Check appropriate box:

- The rates in the Fee Proposal Sheet submitted by Contractor as part of RFP# 41-24 attached as Appendix 1 for a total contract price not to exceed: \$ \_\_\_\_\_.
- The agreed upon price set forth in Exhibit B.

**ARTICLE V - PAYMENT & RETAINAGE** – Payment shall be made as follows:

Check the appropriate box:

- Subject to any additions and deductions allowed for in this Contract, Owner shall make a lump sum payment upon Owner’s final inspection and acceptance of the Work, settlement of all claims and receipt of all close-out documentation. The City shall hold retainage of 5% to guarantee the Work for the one-year warranty period, unless the retainage is waived for the project as indicated in the Scope of Work for the Task Order Contract.
- Subject to any additions and deductions allowed for in this Contract, the Contractor shall submit invoices monthly for that portion of the Work completed. Retainage shall be held at 5% on each invoice. Upon Contractor’s completion of all Work, Owner shall make final payment upon Owner’s final inspection and acceptance of the Work, settlement of all claims and receipt of all close-out documentation. The City shall hold retainage of 5% to guarantee the Work for the one-year warranty period, unless the retainage is waived for the project as indicated in the Scope of Work for the Task Order Contract.

Owner shall make payment to Contractor within 30 days if all conditions for payment as set forth above have been met.

**ARTICLE VI – SPECIAL CONDITIONS** – If there are any special conditions for this Work they shall be listed in Exhibit C. Special Conditions may without limitation include: limitations on times of work; coordination with City forces or other contractors; and shop drawing requirements.

**ARTICLE VII – BOND REQUIREMENTS** – Any Work totaling over **thirty-five thousand dollars (\$35,000.00)** requires Contractor to obtain a payment bond (also known as a Labor & Material bond) to secure payment to subcontractors and material suppliers. The amount of the bond shall be equal to the amount of the Work.

**ARTICLE VIII - LIQUIDATED DAMAGES** – Unless otherwise set forth in an Exhibit D, in event the Contractor fails to successfully complete the work within the specified contract time the Owner may assess the Contractor liquidated damages in the amount of **one hundred dollars (\$100.00)** 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 IX – 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 Contract
- 8.2 Contractor’s Bond (if any)
- 8.3 Scope of Work and Schedule, Exhibit A
- 8.4 Price Proposal, Exhibit B
- 8.5 Special Conditions, if any, Exhibit C
- 8.6 Liquidated Damages adjustments, if any, Exhibit D
- 8.7 Execution of the Work
- 8.8 General Requirements, Control of Work, Temporary Facilities, Measurement and Payment
- 8.9 Insurance Requirements
- 8.10 Any modifications, including change orders, duly delivered after execution of this Agreement

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

**ARTICLE XI – 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 in such action.

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

**ARTICLE XIV - NONDISCRIMINATION** - Any entity that enters a contact for goods or services with the City of Portsmouth or any of its boards, agencies and 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, ender expression, or marital or familial status.

**ARTICLE XV – 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: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CITY OF PORTSMOUTH, N.H.**

BY: \_\_\_\_\_  
Karen Conard, City Manager

## EXECUTION OF WORK:

- A. The selective repairs and/or maintenance approach should be performed using a “find it/fix it” approach that consists of four primary steps:
- Meet with City staff to discuss the proposed work
  - Conduct a site walk to evaluate field conditions
  - Prepare an itemized cost estimate for proposed work
  - Prepare and execute a task order for proposed work

Services are to include provision of all labor, equipment, tools, and materials necessary to complete the work. If necessary, the City may supply repair materials at its discretion.

B. Workmanship and Materials:

1. All equipment, materials, and labor offered and utilized, and all workmanship shall comply with all current codes, standards, regulations, and statutes pertaining to the works of this nature. All necessary federal, state, and local permits and licenses required for the safe completion of the work shall be obtained and kept available at the work site for inspection.
2. All materials required for this work shall be of the latest proven technology new and in original containers.
3. Equipment offered and utilized must be in good mechanical condition and not require excessive maintenance, repair, or create excessive down time that jeopardizes the Contractor’s ability to complete the work.
4. All work shall be accomplished in an expeditious manner by professionals trained for such work.

C. Regulations: The Contractor will comply with all applicable Federal and State labor, compensation, and employer liability insurance requirements for all their employees engaged in the work on the job site.

D. Invoicing and Payments: Contractor shall invoice the City within 30 days of a completed service. The Contractor shall include material costs within the cost estimate and task order, unless otherwise negotiated with the City. An invoice showing costs of materials with a bill of sale attached must be supplied.

The City shall make payment within 30 days of receipt of invoice. Invoices should be submitted to:

City of Portsmouth  
Public Works Department  
Attn: Don Song, Wastewater Project Manager  
680 Peverly Hill Road  
Portsmouth, NH 03801

Payment shall be within 30 days of receipt and approval of invoice.

- E. One Year Guarantee: The successful Contractor shall guarantee to maintain the work and materials against any defects arising from faulty installation, faulty materials, supplied under the contract, or faulty workmanship, which may appear within one (1) year from the date of acceptance of the work by the City. Faulty materials shall be replaced, and any defects discovered or failures occur during the guarantee period, shall be rectified to the satisfaction of the City within 72 hours of notification. This shall be at no cost to the City.
- F. Driver and Operator License: All drivers and/or equipment operators must be properly licensed and experienced. The Contractor is responsible for updating driver and operator information as necessary. The City reserves the right to verify this information at any time before contract award or any time throughout the duration of the contract. Any Contractor who fails to supply photocopies of the operator licenses if requested will be subject to disqualification.
- G. Confined Space: Certain aspects of work performed under this contract may involve the entry into manholes, tanks, trenches, etc.; which are defined as confined spaces by OSHA requirements which detailed in the Combined Federal Register 1910.146. The Contractor is advised to become familiar with all aspects and requirements of this OSHA policy in order for the Contractor to protect his employees and all others involved from the dangers that maybe associated with the limited access and hazardous responsibility to become familiar with and institute the various permitting, sampling, and other associated safety requirements for confined space entry.
- H. Accident Prevention: Precaution shall be exercised at all times for the protection of persons (including employees) and property; and hazardous conditions shall be guarded against or eliminated.

## **GENERAL REQUIREMENTS:**

1. Incidental Work: Incidental work items for which separate payment is not measured includes, but is not limited to, the following items:
  - (a) General clean up;
  - (b) Signs & barricades;
  - (c) Mobilization/Demobilization;
  - (d) Restoration of property;
  - (e) Cooperation with other contractors, abutters and utilities;
  - (f) Clearing, grubbing and stripping;
  - (g) Steel and/or wood sheeting as required;
  - (h) Accessories, fasteners and/or components required to make items complete and functional
  - (i) Final clean-up, the Contractor shall remove from the site all machinery, equipment, surplus materials, rubbish, temporary buildings, barricades and signs. All parts of the Work shall be left in a neat and presentable condition. On all areas used or occupied by the contractor, regardless of the contract limits, the Contractor shall clean-up all sites and storage grounds.

2. Alteration of plans or of character of work:

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 Work; provided that such alterations do not increase or decrease the Contract Price.

3. Change Orders:

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. The contractor shall be required to sign the change order and it shall be considered as part of the Contract documents.

## **CONTROL OF WORK**

### AUTHORITY OF ENGINEER:

(a) All work shall be done under supervision and the satisfaction of the City Engineer. The City Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of the work; all questions that may arise as to the interpretation of the plans and specifications; and all questions as to the acceptable fulfillment of the Contract by the Contractor.

(b) The City Engineer will have the authority to suspend the Work wholly or in part for such periods as he may deem necessary due to the failure of the Contractor to correct conditions unsafe for workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for conditions considered unsuitable for the prosecution of the work, including unfit weather; or for any other condition or reason deemed to be in the public interest. The Contractor shall not be entitled any additional payments arising out of any such suspensions.

(c) The Owner reserves the right to demand a certificate of compliance for a material or product used on the project. When the certificate of compliance is determined to be unacceptable to the City Engineer the Contractor may be required to provide engineering and testing services to guarantee that the material or product is suitable for use in the project, at its expense (see Sample of Certificate of Compliance).

### PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPES:

(a) The Contractor shall use every precaution to prevent injury or damage to wires, poles, or other property of public utilities; trees, shrubbery, crops, and fences along and adjacent to the right-of-way, all underground structures such as pipes and conduits, within or outside of the right-of-way; and the Contractor shall protect and carefully preserve all property marks until an authorized agent has witnessed or otherwise referenced their location.

(b) The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

(c) When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or as a result of

the failure to perform work by the Contractor, the Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing rebuilding, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

(d) The Contractor shall paint with tree paint all scars made on fruit or ornamental trees by equipment, construction operations, or the removal of limbs larger than one inch in diameter. Damaged trees must be replaced if so determined by the City Arborist, in his or her sole discretion.

(e) If the Contractor fails to repair, rebuild or otherwise restore such property as may be deemed necessary, the Owner, after 48 hours' notice, may proceed to do so, and the cost thereof may be deducted from any money due or which may become due the Contractor under the contract.

(f) It is the intent of the Parties that the Contractor preserve, to as great an extent as possible, the historic & natural features of the site.

(g) The Contractor shall follow all US Environmental Protection Agency's current standards for lead paint removals during this project. This includes protection of area around the existing building as required by the US EPA standards. A copy of the contractor's Lead Removal certification shall be provided to the Owner prior to start of construction.

#### MAINTENANCE DURING CONSTRUCTION

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

#### SAFETY PRECAUTIONS

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.

#### BARRICADES, WARNING SIGNS AND TRAFFIC OFFICERS

(a) The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public. Roadway closed to traffic 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.

(b) The Contractor will be held responsible for all damage to the work from traffic, pedestrians, and animals or any other cause due to lack of adequate controlling devices.

The work prescribed herein will not be paid for separately but will be paid for as part of the Contract Price unless agreed to in writing otherwise.

## 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.

### 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) 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.

### 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) 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

## **TEMPORARY FACILITIES**

### **STORAGE FACILITIES:**

(a) The Contractor shall not store materials or equipment in a public right-of-way beyond the needs of one working day. Equipment and materials shall be stored in a location approved by the Owner.

(b) The Contractor shall protect all stored materials from damage by weather or accident and shall insure adequate drainage at and about the storage location.

(c) Prior to final acceptance of the work all temporary storage facilities and surplus stored materials shall be removed from the site.

### **SANITARY AND WATER FACILITIES**

The Owner shall provide the Contractor with reasonable access to toilet facilities for the use of the workers employed on the work.

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

### **TEMPORARY ELECTRICITY**

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

## **MEASUREMENT AND PAYMENT**

### **SCOPE OF PAYMENT:**

(a) The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials and for performing all Work under the contract in a complete and acceptable manner and for all risk, loss, damage or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

(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, 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.

### FINAL ACCEPTANCE:

Upon due notice from the Contractor of presumptive completion of the entire project, the Owner and City Engineer will make an inspection. 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 Owner or City Engineer will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of the final inspection.

If, however, the City Engineer'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. 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.

### ACCEPTANCE AND FINAL PAYMENT:

(a) When the project has been accepted and upon submission by the Contractor of all required reports, completed forms and certifications, the Owner will review the final estimate of the quantities of the various classes of work performed. The Contractor may be required to certify that all bills for labor and material used under this contract have been paid.

(b) The Contractor shall file with the Owner any claim that the Contractor may have regarding the final estimate at the same time the Contractor submits the final estimate. Failure to do so shall be a waiver of all such claims and shall be considered as acceptance of the final estimate. From the total amount ascertained as payable, an amount equal to five percent (5%) of the whole will be deducted and retained by the Owner for the guaranty period. This retainage may be waived, at the discretion of the City, provided the required Maintenance Bond has been posted. After approval of the final estimate by the Owner, the Contractor will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the contract.

(c) All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

### 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 there from which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The Owner will give notice of defective materials and work with reasonable promptness.

(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.

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.

(c) At completion of project, Contractor to provide to Owner, written guarantee of one (1) year Workmanship warranty; and one (1) year Manufacturer's warranty.

#### NO WAIVER OF LEGAL RIGHTS:

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

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

#### **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 Owner.

**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 the City of Portsmouth, NH and \_\_\_\_\_

(Contractor)

of \_\_\_\_\_.  
(Contractor's Address)

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

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

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
Notary Public

**CONTRACTOR'S RELEASE**

KNOW ALL MEN BY THESE PRESENTS that

I, \_\_\_\_\_ {insert name},  
in my capacity as \_\_\_\_\_ {insert title}  
of \_\_\_\_\_ {insert name of Contractor}

agree that upon receipt of the sum of \$ \_\_\_\_\_ from the CITY OF  
PORTSMOUTH NEW HAMPSHIRE as final and completed payment for the construction of:  
\_\_\_\_\_ {insert name of project}

do hereby on behalf of \_\_\_\_\_ {name of Contractor} and its successors and  
assigns 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 construction of  
the above-referenced project and the contract dated \_\_\_\_\_. All claims and demands shall  
include without limitation all actions, causes, suits, debts, dues, duties, sums of money, accounts,  
reckonings, bonds, bills, specifications, covenants, contracts, agreements, promises, damages and  
judgments whatsoever in law or equity against the City of Portsmouth, New Hampshire which Contractor  
ever had, now has 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,

Witness

Contractor:

\_\_\_\_\_  
print name : \_\_\_\_\_

By: \_\_\_\_\_  
Its Duly Authorized \_\_\_\_\_

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