



## GENERAL TERMS & CONDITIONS

1. **The City expressly reserves the right to reject a bid** from any Contractor who has within the last year, or is currently not, in substantial compliance, as determined by the City Manager, with the time requirements or other significant provisions of a City of Keene Contract. This provision shall in no way be construed to prohibit the City Manager from rejecting any bid for other reasons. The City reserves the right to reject any or all Bids, waive technical or legal deficiencies, and accept any bid that deems in the best interest of the City.
2. **Bids, when opened, shall be irrevocable for a period of ninety (90) calendar days** following the bid opening date. Following the review of all bids by the City Manager, that official will award the Contract to the best responsible bidder. The City Manager's judgment shall be final and the right is reserved by the City, through its City Manager to reject any or all bids as he/she may determine and to waive defects in form or minor irregularities where the best interest of the City would be served.
3. The bidder shall not either directly or indirectly enter any agreement, participate in any **collusion**, or otherwise take any action in restraint of free competitive bidding in connection with the Contract.
4. **All applicable laws, ordinances, and rules and regulations** of all authorities having jurisdiction over construction of the PROJECT, including Safety and Health Regulations (CFR 29 Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974, **shall apply** to the Contract throughout. Contractors are urged to become familiar with the requirements of these regulations.
5. Further, the BIDDER agrees that he and all subcontractors shall abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the **equal opportunity** clause set forth in the GENERAL CONDITIONS.
6. The successful bidder shall not use the name of the City in any **advertisement** without first obtaining the written consent of the City Manager.
7. Any change to the provisions or specifications of the Contract shall be made by a **written addendum** issued no later than four (4) working days prior to the bid opening date. Prospective bidders shall have complete responsibility for being aware of any and all addenda.
8. Should the bidder find, during the examination of the Contract Documents, Bids, Specifications, any **discrepancies, omissions, ambiguities, or conflicts in or among the documents**, or be in doubt as to their meaning, they shall, in writing, bring the question to the Manager of Purchasing and Contract Services' attention not later than five (5) working days before the proposal due date. The City Manager of Purchasing and Contract Services will review the questions(s) and, where the information sought is not clearly indicated or specified, he/she will issue a clarifying addendum which will become part of the bid.
9. A **performance BOND and a payment BOND**, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the Contract. Attorneys in fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

10. Award will be made to the **lowest responsive and responsible BIDDER**. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. The party to whom the Contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. In case of failure of the BIDDER to execute the Agreement, the OWNER may, at his option, consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.
11. The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall **sign the Agreement** and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.
12. The **NOTICE TO PROCEED** shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period; the time may be extended by mutual agreement between the OWNER and CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.
13. The OWNER may make such **investigations** as deemed necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.
14. The Contractor shall secure and pay for all **permits and licenses** for the project, in accordance with the bid documents, Contract, and specifications required for a complete and finished job.
15. The Contractor shall be **responsible for all damage or loss of property, or injury** to persons arising out of their actions or failure to act. The Contractor does hereby indemnify and hold the City of Keene harmless from any liability, which the City may have, if any, for damages or claims for damages which may result or arise from the Contractor's performance of the Contract. The Contractor undertakes to indemnify and hold harmless the City of Keene, and its officers and agents from any and all liability, loss, or damages it may suffer as a result of any and all claims, demands, costs, or judgments against it arising from the performance of the Contract. The Contractor agrees to defend against any and all claims brought or actions filed against the City of Keene, its officers, and agents with respect to the subject of the indemnity provided for herein, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of the indemnity provided for herein, the Contractor agrees that the City of Keene may employ attorneys of its own selection to appear and defend the claim or action on behalf of the City of Keene, at the expense of the Contractor.

The City of Keene, at its option, shall have the sole authority for the direction of the defense and shall be sole judge of the acceptability of any compromise or settlement of any claims or actions against the City.

16. The bidder shall take out and maintain at his own expense **insurance**, as outlined below. Approval of insurance by the City of Keene shall not relieve or decrease the Liability of the Contractor hereunder.
  - a) **COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE** - The Contractor shall take out and maintain during the life of this Contract the statutory Worker's Compensation and Employer's Liability Insurance for all of their employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all work of the latter's employees to be engaged in such work.
  - b) **BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY** - The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Property Damage Liability Insurance as shall protect them and any subcontractors performing work covered by the Contract from claims for damages for personal injury, including accidental death, as well as from claims for Property Damage which may arise from operations under this Contract, whether such operations be by themselves or by any subcontractor or by anyone directly and/or indirectly employed by either of them, and the amount of such insurance shall not be less than:
    - i) Bodily Injury Liability Insurance, in an amount not less than One Million Dollars (\$1,000,000) for injuries, including wrongful death to any one person and subject to the same limits for each person in an amount not less than One Million Dollars (\$1,000,000) on account of one accident.
    - ii) Property Damage Insurance in an amount not less than One Million Dollars (\$1,000,000) for damages on account of one accident or all accidents.
  - c) All policies and certificates of insurance shall include the City as an additional insured through written endorsement and carry a ten (10) day notice of cancellation or change in expiration. Notice of any cancellation or change in expiration shall be sent to the City.
17. **Bid Security** will be returned to all bidders within five (5) working days after the City of Keene and the accepted bidder have executed the Contract, or if no Contract has been executed, within sixty (60) calendar days after the date of opening of bids, upon demand of the bidder at any time thereafter, so long as they have not been notified of the acceptance of their bid.
18. The successful bidder, upon their **failure or refusal to execute and deliver the Contract and security**, if required, within ten (10) calendar days after they have received notice of the acceptance of their bid, shall forfeit to the City of Keene, New Hampshire, as liquidated damages for such failure or refusal the security deposited with their bid.
19. The bidder will **guarantee** the work and materials and the work and the materials of all subcontractors for a period of one (1) year from the certified date of substantial completion.

Neither the final certificate of payment nor any provision in the Contract Documents shall relieve them of responsibility for negligence, or faulty materials, or workmanship within the extent and period provided by laws, and upon written notice, they shall remedy any defaults due thereto, and pay all expense for any damage to work resulting therefrom. It is hereby specifically agreed and understood that this guarantee shall not include any cause or causes other than defective work or materials. It is further understood that the City Manager shall be the final judge as to whether or not any defect is a defect in workmanship and/or materials, which is the bidder's responsibility. It is hereby specifically agreed and understood that this guarantee shall not include any repairs made necessary by any cause or causes other than defective work or materials.

20. The **Contract Documents** shall include the "Invitation to Bid", "General Terms & Conditions", "Specifications", "Drawings", "Proposal", any issued addenda, "Performance-Payment Security" and the final executed Contract Agreement. The intent of these documents is to include all labor, materials, appliances, and services of every kind necessary for the proper execution of the work and the terms and conditions of payment, therefore. The documents are to be considered as one, and whatever is called for by any one of the documents shall be as binding as if called for by all.
21. This Contract shall be interpreted as a City of Keene, New Hampshire Contract, in accordance with the ordinances of the City of Keene and **laws of the State of New Hampshire**.
22. **Payments** will be made once each month as the work progresses, provided that at least Five Hundred Dollars (\$500.00) has been earned during the estimated period. The City shall make payment on account of the Contract as follows: The Contractor shall invoice the City for the work completed. After receipt of the Contractor's invoice by the City of Keene Engineer, the Engineer shall inspect the premises and if the work has been completed in accordance with the Specifications and the Contract Documents, the Engineer shall then submit the invoice to the City Finance Director who shall make payment in or within fifteen (15) working days of the approved amount of the invoice. The balance remaining after the specified percentage has been retained and less all previous payments will be certified for payment on each partial estimate. Until the work is substantially complete, as determined by the Engineer, retainage shall be 5% of the monthly payments claimed. Upon substantial completion, the amount of retainage will be reduced to 2% of the total Contract price. The final 2% retainage shall be held during the one-year warranty period and released only after the City has accepted the project.
23. After execution of the Contract, there shall be no change in the Bid Documents, or the Specifications except by a written amendment executed in the same manner as the Contract or by **Change Orders** as described below:
  - a) The City of Keene, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract sum, and the Contract time being adjusted accordingly. All such changes in the work shall be executed under the applicable conditions of the Contract Documents.
  - b) A change order is a written order to the Contractor signed by the City Manager, the City Engineer, and the Contractor after the execution of the Contract, authorizing a change in the work or an adjustment in the Contract sum or in the Contract time.
  - c) The **amount of the compensation** to be paid to the Contractor for any extra work so ordered shall be made in accordance with whichever of the following plans the City elects:

- i) A price **agreed upon between the parties** and stipulated in the order for extra Work.
- ii) A price determined by adding fifteen percent (15%) to the "reasonable cost" of the extra work performed, such "reasonable cost" to be determined by the City Engineer in accordance with the following paragraph:

(1) In arriving at the "**reasonable cost**" for the purposes of (2) above, the City Engineer shall include the "reasonable cost" to the Contractor of materials used, of all labor common and skilled, trucks, and the fair market rental rate for machinery and equipment for the period employed directly on the work. The "reasonable cost" for extra work shall include the cost to the Contractor of any additional insurance that may be required covering public liability for injury to persons and property, the cost of Worker's Compensation Insurance, Federal Social Security, and any other costs based on payrolls, and required by law. The cost of tools, buildings, or any portion of the time of the Contractor, their project supervisor, or their superintendent, or any allowance for use of capital or the premium on the bond as assessed upon the amount of extra work, these items being covered by the fifteen percent (15%) added to the "reasonable cost".

- iii) In case of extra work which is done by subcontractors, whether these are under the specific Contract items provided herein, or otherwise if so approved by the City, the fifteen percent (15%) added to the "reasonable cost" of the work will be allowed only to the subcontractor. On such work, an additional five percent (5%) of the "reasonable cost" (before additions of the fifteen percent (15%)) will be paid to the Contractor for their work in directing the operations of the subcontractor and for any overhead involved.

24. The entire work contemplated by the Contract shall be under the **supervision** of the Public Works Director or agents designated by him/her as the representative of the City and the City Manager and all questions concerning the prosecution of the work shall be referred to and decided by them. The City Manager's decision will be final.

25. **DETERMINATION AND EXTENSION OF CONTRACT TIME** - It is an essential part of the Contract that the Contractor shall perform fully, entirely, and in an acceptable manner, the work under Contract within the time stated in the Contract. If the Contractor finds it impossible for reasons beyond their control to complete the work within the Contract time, they shall make a written request to the City Manager for an extension of time setting forth therein the reasons which they believe will justify the granting of their request. The Contractor's plea that insufficient time was specified is not a valid reason for an extension of time. If the City Manager finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, including but not limited to acts of God, utility relocations, strikes, delays in the delivery of critical materials, problems, work of added complexity, work ordered done at a late or unfavorable stage of construction, and work requiring the use of specialists for whose starting time a reasonable latitude must be allowed, the City Manager may extend the time for completion in such amount as conditions justify. When the extension of the Contract time is required due to delays in the delivery of critical materials, sufficient evidence must be furnished to the City at the time the delay occurs showing that such delay results from the materials being unavailable by reason of unusual market conditions such as an industry-wide strike, natural disaster, or an area-wide shortage which arises after bids are taken and which prevents the procurement of materials within the allowable time of limitations. Delays due to slow delivery from a source of supply when the required material is available will not be considered as justification for an extension of time.

26. **FAILURE TO COMPLETE ON TIME** - For each day that any work remains uncompleted after the Contract time specified for the completion of the work, the Contractor agrees that the sum specified in the Contract will be deducted from any money due the Contractor, not as a penalty, but as reasonable liquidated damages, provided, however, that due account shall be taken of any adjustment of the Contract time for completion of the work granted under the provision of DETERMINATION AND EXTENSION OF CONTRACT TIME. The fixed, agreed liquidated damages shall be assessed by the City Manager in a fair and equitable manner. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended will in no way operate as a waiver on the part of the City of any of its rights under the Contract. The City Manager may waive such portions of the liquidated damages as may accrue after the work is in condition for safe and convenient use. Should the amount of money otherwise due the Contractor be less than the amount of such liquidated damages, the Contractor and its SURETY shall be liable to the City for the deficiency.
27. **TERMINATION** - The City shall have the right at any time for any reason whatsoever, to interrupt or terminate any part of or all of the work required of the Contractor under this Agreement, with a seven (7) day written notice of such interruption or termination transmitted to the Contractor by the City. In the event of termination of any part of or all of this Agreement, without fault on the part of the Contractor, the Contractor shall be entitled to compensation for all work performed to the satisfaction of the City and pursuant to this Agreement through the date of termination.
28. **PROJECT SCHEDULE** -The Contractor shall submit a construction schedule for the first twenty (20) calendar days of work within five (5) calendar days of the Contract Award. A complete Construction Schedule is required within ten (10) calendar days after the start of the Contract. The schedule is to be revised every two (2) weeks thereafter.
29. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY**
- a) The CONTRACTOR certifies by signing this AGREEMENT that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into a Contract for the above-mentioned PROJECT by any federal agency or by any department, agency or political subdivision of the State of New Hampshire. The term "principal" for purposes of this CERTIFICATION means an officer, director, key employee, or another person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONTRACTOR.
  - b) The CONTRACTOR also certifies that it will verify the state and federal suspension and debarment status for all parties (sub-contractors, material suppliers, etc.) receiving funds under this AGREEMENT as a sub-Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from the use of a suspended or debarred party.
  - c) The CONTRACTOR shall immediately notify the CITY if any sub-Agreement party is debarred or suspended, and shall, at the CITY'S request, take all steps required by the CITY to terminate its sub- Agreement relationship with the party for work to be performed under the AGREEMENT for the above-mentioned PROJECT.