



City of Keene
New Hampshire

Purchasing & Contract Services
City Hall – 3rd Floor, 3 Washington Street
Keene, New Hampshire 03431
(603) 357-9800
www.keenenh.gov/purchasing-projects

Contract for Professional Services
Project No. _____

This AGREEMENT made and entered into by and between the **City of Keene**, a New Hampshire municipal corporation with an address of **3 Washington Street, Keene, NH, 03431**, hereinafter the “CITY,” and _____ a corporation with an address of _____ hereinafter the “ENGINEER.”

WITNESSETH

WHEREAS, the CITY intends to enter into a Professional Services Agreement for an amount not to exceed _____ (_____) with the ENGINEER. The contract is for the purpose of providing the CITY with professional engineering services for _____ hereinafter the “PROJECT”.

NOW, THEREFORE in consideration of these promises and of the mutual covenants herein set forth, the CITY hereby contracts with the ENGINEER to furnish the following professional services in connection with the proposed PROJECT, and it is agreed by the CITY and the ENGINEER as set forth below. In the event of any conflict regarding language between the various contract documents and exhibits, CITY language shall take precedence.

SECTION 1 - SERVICES OF ENGINEER

- 1.1. General. Upon execution of this AGREEMENT, the ENGINEER agrees to proceed for the CITY with all project formulation, deliverables, and management of the PROJECT as described in **Exhibit A, Scope of Services**.
- 1.2. The ENGINEER agrees to provide all services necessary to maintain eligibility for funding.
- 1.3. The parties intend that the ENGINEER shall be an independent contractor for all purposes and not an employee of the City.

SECTION 2 - CITY'S RESPONSIBILITIES

2.1 Designate in writing a person to act as the CITY'S representative with respect to the Services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define THE CITY'S policies and decisions with respect to the ENGINEER'S services for the PROJECT, but shall not have the authority to amend this AGREEMENT.

2.2 Assist the ENGINEER by placing at his/her disposal all available information pertinent to the PROJECT, including but not limited to, previous reports, studies, and other data relative to the design of the PROJECT.

2.3 Provide all criteria as to the CITY'S requirements for the PROJECT.

2.4 Assist the ENGINEER in arranging access to and making provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform Services under this AGREEMENT.

2.5 Give prompt written notice to the ENGINEER whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S Services.

SECTION 3 - PERIOD OF SERVICE

3.1 The compensation for ENGINEER'S Services has been agreed to in anticipation of the orderly and continuous progress of the PROJECT. The PROJECT shall commence upon contract execution and be completed in a timely manner. The specific schedule of work to complete the Services shall be made by mutual agreement.

SECTION 4 – COMPENSATION

4.1 Payment for Services shall be made according to the Fee Schedule, unless otherwise agreed to by a written Change Order.

4.2 ENGINEER shall submit invoices, accompanied by a Payment Request complete with all relevant details (such as hours worked, staff, etc.) to: the attention of _____ **City of Keene**, _____, **Keene, NH 03431**.

4.3 The CITY shall make payment to the ENGINEER within thirty (30) days after submission of invoices for work accepted by the City.

4.4 Records of the ENGINEER'S salary cost and expenses pertinent to ENGINEER'S compensation under this AGREEMENT will be kept in accordance with generally accepted accounting practices. Copies will be made available to CITY at no cost if requested prior to final payment for ENGINEER'S services.

SECTION 5- CHANGES IN SCOPE

5.1 Changes in the Scope of Services may be accomplished after execution of this AGREEMENT, and without invalidating the AGREEMENT, by Change Order Request. (See Exhibit: "City of Keene Change Order Request")

5.1.1 Changes to the Scope of Services will be submitted to the CITY in writing as soon as the ENGINEER becomes aware of the need to change the Scope of Services.

5.1.2 The ENGINEER will not proceed with any change to the Scope of Service unless and until receiving written authorization to proceed from the CITY.

5.2. Changes in the Work. If during the term of the AGREEMENT, the scope of the work changes substantially at the request of the CITY, or if the period of service is increased substantially due to circumstances beyond the reasonable control of the ENGINEER, an additional fee shall be paid to the ENGINEER. The additional work and the compensation, therefore, shall be in accordance with the ENGINEER'S standard billing rates and first agreed to by written change order.

SECTION 6 - GENERAL CONSIDERATION

6.1 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 ENGINEER under this AGREEMENT, with a seven (7) day written notice of such interruption or termination transmitted to the ENGINEER by the CITY. In the event of termination of any part of or all of this AGREEMENT, without fault on the part of the ENGINEER, the ENGINEER 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. In order that the ENGINEER shall receive payment under termination notice of any part of the work, all plans, drawings, tracing, field notes, estimates, specifications, proposals, sketches, diagrams, and calculations, together with all other materials and data collected or prepared in connection with the PROJECT shall be transmitted to the CITY in a form acceptable to the parties.

6.2 Insurance and Indemnification.

6.2.1 The ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

6.2.2 The ENGINEER will maintain Professional Liability insurance on any claims made basis in the sum of not less than One Million Dollars (\$1,000,000).

6.2.3 In the event that the ENGINEER fails for any reason to continue to maintain said professional liability insurance coverage in full force and effect at any time relevant to this AGREEMENT, this AGREEMENT will terminate.

6.2.4 The ENGINEER will maintain General Comprehensive Liability insurance on an occurrence basis for bodily injury, death, or loss, or damages to the property of third persons in a minimum amount of One Million Dollars (\$1,000,000).

6.2.5 The ENGINEER shall secure and maintain, for the duration of this AGREEMENT, including any supplements thereto, Automotive Liability insurance covering the operations of all motor vehicles, including those hired or borrowed, used by the ENGINEER and subcontractors in connection with this AGREEMENT in the following amounts:

6.2.5.1 Not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total of Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident or occurrence.

6.2.5.2 Not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of injury to or destruction of property in any one accident or occurrence.

6.2.6 The ENGINEER agrees to name the CITY as an Additional Insured on all policies, except Worker's Compensation and Property Liability insurance. A Certificate of Insurance shall be provided to the CITY upon Contract execution and policy renewal.

6.2.7 Indemnification. The ENGINEER shall defend, indemnify, and hold harmless the CITY, its officers and employees, from and against any and all losses suffered by the CITY, its officers and employees, and any and all claims, liabilities, or penalties asserted against the CITY, its officers and employees, by or on behalf of any person, on account of, based, or resulting from, arising out of (or which may be claimed to arise out of) the negligent acts or omissions of the ENGINEER. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the statutory limits on liability applicable to the CITY. This covenant shall survive the termination of this AGREEMENT.

6.3 Controlling Law. This AGREEMENT is to be governed by the laws of the State of New Hampshire.

6.4 Reuse of Documents. All documents, including but not limited to drawings, specifications, estimates, field notes, and other digital files, prepared by or for the ENGINEER in the performance of the AGREEMENT are considered property of the CITY and, as such, may be used by the CITY without having to receive the ENGINEER'S permission to use the documents. Reuse of documents by the CITY shall not result in additional ENGINEER liability.

6.5 Successors and Assignments.

6.5.1 The CITY and the ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of the CITY and the ENGINEER are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.

6.5.2 Neither the CITY nor the ENGINEER shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates and as the ENGINEER may deem appropriate to assist in the performance of Services hereunder.

6.5.3 Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the CITY and the ENGINEER, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the CITY and the ENGINEER and not for the benefit of any other party.

6.6 Certification Regarding Debarment, Suspension, or Ineligibility

- 6.6.1 The ENGINEER 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 ENGINEER.
- 6.6.2 The ENGINEER also certifies that it will verify the state and federal suspension and debarment status for all parties (sub-consultant/vendor/contractor, 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.
- 6.6.3 The ENGINEER 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.

SECTION 7 - SPECIAL PROVISIONS, DOCUMENTS AND SCHEDULES

7.1 The following documents are attached to or referenced and made part of this AGREEMENT:

- 7.1.1 Exhibit A, Scope of Services
- 7.1.2 Exhibit B, Payment Request Form
- 7.1.3 Exhibit C, Change Order Request

IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT as of _____, 2022.

CITY:

CITY OF KEENE, NEW HAMPSHIRE

By: _____

Elizabeth A. Dragon, City Manager

Address for giving notice:

City Hall
3 Washington Street
Keene, NH 03431

ENGINEER

By: _____

Address for giving notice:

SAMPLE DOCUMENT



City of Keene

New Hampshire

EXHIBIT B

Payment Request Form		
Payment Request No. _____	Date of Request: _____	
Project Title: _____,		
Project No. _____		
Professional Services for period beginning _____ through _____.		
Description of Service (broken down by task/item and the compensation being requested):		
A. Total Amount Requested (this request):	_____	_____
B. Previously Invoiced Amount:	_____	_____
C. Total Expended To Date (A+B):	_____	_____
D. Authorized Contract Amount:	_____	_____
Total Authorization Remaining (D-C):	_____	_____
Contractor: _____	Approved: _____	Reviewed: _____
Title: _____	Project Manager	Finance Director
Date: _____	Date: _____	Date: _____



EXHIBIT C

Design Change Order Request		
Change or Work Request No. _____ Date: _____ Project Title: _____, Project No. _____		
Description of Change in Scope: <p style="text-align: center;"><i>Complete description of change in scope and additional services being rendered.</i></p>		
Fee Adjustment Amount (This change):	_____	(Not to Exceed)
Prior Contract Amount:	_____	(Not to Exceed)
Total Adjusted Contract Amount:	_____	(Not to Exceed)
Request Approval:	Recommend Approval:	Recommend Approval:
_____	_____	_____
ENGINEER	Finance Director	_____
Date: _____	Date: _____	Date: _____
Approved:		
_____	Date: _____	
City Manager		