TOWN OF JAFFREY, NEW HAMPSHIRE
INVITATION TO BID

SUBMIT BID TO:

Town of Jaffrey
Department of Public Works
23 Knight Street
Jaffrey, NH 03452

Facsimile bids are not acceptable.

BIDDER ACKNOWLEDGEMENT

- GENERAL CONDITIONS -

THESE INSTRUCTIONS ARE STANDARD FOR ALL BIDS FOR COMMODITIES/SERVICES ISSUED BY THE TOWN OF JAFFREY. THE TOWN OF JAFFREY MAY DELETE, SUPERSEDE OR MODIFY ANY OF THESE STANDARD INSTRUCTIONS FOR A PARTICULAR CONTRACT BY INDICATING SUCH CHANGE IN SPECIAL INSTRUCTIONS TO BIDDERS OR IN THE BID SHEETS. ANY AND ALL SPECIAL CONDITIONS THAT MAY VARY FROM THE GENERAL CONDITIONS SHALL HAVE PRECEDENCE. BIDDER AGREES THAT THE PROVISIONS INCLUDED WITHIN THIS INVITATION FOR BID SHALL PREVAIL OVER ANY CONFLICTING PROVISION WITHIN ANY STANDARD FORM CONTRACT OF THE BIDDER REGARDLESS OF ANY LANGUAGE IN BIDDER'S CONTRACT TO THE CONTRARY.

NOTICE TO BIDDERS: SEALED BIDS WILL BE RECEIVED ON THE DATE, AND AT THE PLACE, AND FOR THE ITEMS LISTED ON THE ATTACHED TOWN BID FORMS. THESE BIDS WILL BE PUBLICLY OPENED AT TOWN HALL OR OTHER DESIGNATED AREA, IN THE PRESENCE OF BIDDERS AND TOWN OFFICIALS. ALL BIDDERS AND THE PUBLIC ARE INVITED AND ENCOURAGED TO ATTEND THE BID OPENING. AFTER TABULATION AND REVIEW, AND WHEN REQUIRED, BIDS WILL BE PRESENTED TO THE BOARD OF SELECTMEN FOR AWARD OF BID. SUCH AWARD IS TO BE MADE AT A SUBSEQUENT MEETING OF THE BOARD. ALL AWARDS OF BIDS ARE SUBJECT TO APPROPRIATION.

PURPOSE OF BID: THE TOWN OF JAFFREY INTENDS TO SECURE A SOURCE OF SUPPLY FOR ITEM (S) OR SERVICE (S) AT THE LOWEST PRICE; EARLY AND SATISFACTORY MANUFACTURE; AND PROMPT AND CONVENIENT SERVICE AND SHIPMENT BY THE SUPPLIER TO THE TOWN. ANY FAILURE ON THE PART OF THE SUPPLIER TO COMPLY WITH THE ENSUING CONDITIONS AND SPECIFICATIONS SHALL BE REASON FOR TERMINATION OF CONTRACT. THE TOWN RESERVES THE RIGHT TO MAKE AN AWARD TO THE SUPPLIER WHERE THE PRODUCT MEETS THE SPECIFICATIONS, TERMS AND CONDITIONS AND WHERE THE BID IS CONSIDERED TO BEST SERVE THE TOWN'S INTERESTS.

BIDDER ACKNOWLEDGMENT MUST BE SIGNED AND RETURNED WITH YOUR BID

SEALED BIDS: This form must be executed and submitted with all Bid sheets in a sealed envelope. The face of the envelope shall contain the above address, the date and time of Bid opening and Bid number. Bids not submitted on

attached Bid Form may be rejected. All Bids are subjected to the conditions specified herein. Those which do not comply with these conditions are subject to rejection.

BID TITLE: Meetinghouse Tower Project

BIDS WILL BE OPENED **11:00 A.M**. (EST), August 20, 2021 and may not be withdrawn during the 60 calendar days following such date and time.

_____
Jon Frederick, Town Manager
603-532-7445

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_____
CORRECT LEGAL NAME OF BIDDER

_____
(SIGNATURE OF BIDDER'S AUTHORIZED AGENT)

_____
TITLE

_____
TYPED/PRINTED NAME OF AUTHORIZED AGENT

_____
ADRESS

_____

PHONE NO: (_____)_____

_____
FEDERAL ID NUMBER OR SOCIAL SECURITY NUMBER OF BIDDER

I certify that this Bid acknowledgement is made without prior understanding, agreement or connection with any corporation, firm or person submitting a Bid for the same commodities/services, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Bid and certify that I am authorized to sign this Bid for the Bidder. By signature on this form, Bidder acknowledges and accepts without limitation, pages 1 through ## inclusive of the Invitation to Bid as well as any special instructions if applicable.

INSTRUCTIONS TO BIDDERS:

1. DEFINED TERMS.

Terms used in these Instructions to Bidders are defined and have the meanings assigned to them. The term "Bidder" means one who submits a Bid directly to the TOWN, as distinct from a sub-bidder who submits a Bid to the Bidder. The term "Bid" generally means the offer to provide work and labor or supply of materials or goods at a specified price to the Town. The term "Successful Bidder" means the most responsible and responsive Bidder to whom TOWN (on the basis of TOWN'S evaluation as hereinafter provided) makes an award. The term "TOWN" refers to the TOWN of JAFFREY. The term "Bid Documents" includes the Invitation to Bid, Instructions to Bidders, Additional Instruction to Bidders, Bid Proposal, Reference Information, Certified Resolution, Special Conditions, Bid Form, Non-Collusive Affidavit, Certificate(s) of Insurance, if required, Payment and Performance Bonds, if required, Indemnity Agreement, Bid Security, if required, and the proposed Contract Documents, if any, including all Addenda issued prior to receipt of Bids.

2. COPIES OF BIDDING DOCUMENTS

Complete sets of Bid Documents must be used in preparing Bids. The TOWN does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents. The TOWN, in making copies of Bid Documents available, does so only for the purpose of obtaining Bids and does not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

No Bid will be accepted from, nor will any contract be awarded to any person who is in arrears to the TOWN, upon any debt or contract, or who is a defaulter, as surety or otherwise, upon any obligation to the TOWN, or who is deemed irresponsible or unreliable by the TOWN.

As part of the Bid evaluation process, the TOWN may conduct a background investigation. Bidder's submission of a Bid constitutes acknowledgment of the process and consent to such investigation. The TOWN shall be the sole judge in determining Bidder's qualifications.

4. EXAMINATION OF BID DOCUMENTS

Before submitting a Bid, each Bidder must (a) examine the Bid Documents thoroughly; (b) consider federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress, performance, or provision of the commodities and/or services; (c) study and carefully correlate Bidder's observations with the Bid Documents, and (d) notify the Town Manager or designated individual of all conflicts, errors and discrepancies in the Bid Documents.

The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception, the Bid is premised upon performing the services and/or furnishing the commodities and materials and such means, methods, techniques, sequences or procedures as may be indicated in or required by the Bid Documents, and that the Bid Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing of the goods and/or services.

5. SPECIFICATIONS

The apparent silence of the Specifications as to any detail, or the apparent omission from the Specifications of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice

is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the Specifications shall be made on the basis of this statement.

For the purpose of evaluation, the Bidder must indicate any variance or exceptions to the stated Specifications no matter how slight. Deviations should be explained in detail. Absence of variations and/or corrections will be interpreted to mean that the Bidder meets all the Specifications in every respect.

Any manufacturers' names, trade names, brand names, information and/or catalog numbers used herein are for the purpose of describing and establishing a general standard of quality, performance and characteristics and are not intended to limit or restrict competition. The Bidder may offer any brand which meets or exceeds the Specifications for any item(s). If Bids are based on equivalent products, Bidder shall indicate on the Bid Form the manufacturer's name and catalog number. Bidder shall submit with his Bid, complete and descriptive literature and/or specifications. The Bidder should also explain in detail the reason(s) why and submit proof that the proposed equivalent will meet the Specifications and not be considered an exception thereto. The determination of equivalency shall rest solely with the TOWN. If Bidder fails to name a substitute, it will be assumed that the Bidder is bidding on and will be required to furnish commodities identical to Bid standards.

The TOWN also reserves the right to waive minor variations to specifications contained in the Invitation to Bid. This interpretation of minor variations shall be made by applicable the TOWN personnel.

6. INTERPRETATIONS AND ADDENDA

To ensure fair consideration for all Bidders, the TOWN prohibits communication to or with any department, officer or employee during the submission process except as provided below.

If the Bidder should be in doubt as to the meaning of any of the Bid Documents, or is of the opinion that the plans and/or specifications contain errors, contradictions or reflect omissions, the Bidder shall submit a written request directed to the Town Manager to be forwarded to the appropriate person or department for interpretations or clarification. Interpretations or clarifications deemed necessary by the Town in response to such questions will be issued in the form of written addenda, mailed to all parties recorded by the Town Manager as having received the Bid documents. The issuance of a written addendum by the Town Manager shall be the only official method whereby such an interpretation or clarification will be made.

7. PRICES BID

Prices shall be shown in both unit amounts and extensions whenever applicable. In the event of discrepancies existing between unit amounts and extension or totals, unit amounts shall govern.

Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In the event of any discrepancy between written prices quoted in the proposal and any prices quoted in figures, the written proposal shall control.

All applicable discounts shall be included in the Bid price for materials and services and will be considered as determining factors in recommending an award in case of tie Bids. Discounts extended to the TOWN shall include but not be limited to those discounts normally extended to governmental agencies as well as the private sector.

Chain discounts are not acceptable and will not be considered in determining an award. Bidders may bid only one (1) discount for each item on the Bid Form. Firm discounts and prices are to be quoted for the term of the Contract.

Bidder warrants by virtue of bidding that prices, terms and conditions in the Bid will be firm for acceptance for a period of sixty (60) calendar days from the date of Bid opening unless otherwise stated by the TOWN.

The Bid price shall include all permit fees, royalties, license fees and other costs arising from the use of such design, device or materials in any way involved in the work as well as all costs of packaging, transporting and delivery to the designed location within the TOWN.

8. OCCUPATIONAL HEALTH & SAFETY

Any materials or substances delivered as a result of this contract that is deemed toxic by any appropriate authority shall be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

The chemical name and the common name of the toxic substance.

The hazards or other risks in the use of the toxic substance including:

The potential for fire, explosion, corrosively and reactivity;

The known acute and chronic health effects of risk from exposure including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

The primary routes of entry and symptoms of over exposure.

The proper precautions, handling practices, necessary personal protection equipment and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of exposure.

The emergency procedure for spills, fire, disposal and first aid.

A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

9. SUBMISSION OF BIDS

Bids shall be submitted at or before the time and at the place indicated in the Invitation to Bid and shall be submitted in a sealed envelope. The envelope shall be clearly marked on the exterior "BID FOR (PROJECT TITLE) THE TOWN OF JAFFREY NEW HAMPSHIRE, OPEN….(insert date given in Invitation to Bid)" and shall state the name and address of the Bidder and shall be accompanied by any other required documents. No responsibility will attach to the TOWN for the premature opening of a Bid not properly addressed and identified.

Bids must be typed or printed in ink. Use of erasable ink is not permitted. All blanks on the Bid Form must be completed. Names must be typed or printed below the signature. Facsimile Bids will not be accepted.

All Bidders should be aware that the Invitation to Bid and the responses thereto are in the public domain. However, the Bidders are requested to identify specifically any information contained in their Bids which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

All Bids received from Bidders in response to the Invitation to Bid will become the property of the TOWN and will not be returned to the Bidders. In the event of contract award, all documentation produced as part of the contract shall become the exclusive property of the TOWN.

The submitted Bid shall constitute a firm offer on the part of the Bidder to furnish the commodities and/or services requested.

10. BID FORMS

The Bid Form is included with the Bid Documents and must be used by the Bidder. Failure to do so may cause the Bid to be rejected. The forms must be submitted in good order and all blanks must be completed.

The Bid must be signed by one duly authorized to do so and in cases where the Bid is signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the Bid.

Bids by corporations must be executed in the corporate name by the President or other corporate officers accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a general partner whose title must appear under the signature and the official address of the partnership must be shown below the signature.

11. MODIFICATION AND WITHDRAWAL OF BIDS

Bids must be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the deadline for submitting Bids. A request for withdrawal or a modification must be in writing and signed by person duly authorized to do so and, in a case where signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modification.

Withdrawal of a Bid will not prejudice the rights of a Bidder to submit a new Bid prior to the Bid date and time. After expiration of the period for receiving Bids, no Bid may be withdrawn or modified.

12. REJECTION OF BIDS

To the extent permitted by applicable state and federal laws and regulations, the TOWN reserves the right to reject any and all Bids, to waive any and all informalities, irregularities and technicalities not involving price, time or changes in the commodities and/or services, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Bids will be considered irregular and may be rejected if they show serious omissions, alterations in form, additions not called for, conditions or unauthorized alterations or irregularities of any kind.

The TOWN reserves the right to reject the Bid of any Bidder if the TOWN believes that it would not be in the best interest of the TOWN to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the TOWN.

More than one Bid received for the same work from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the same work will cause the rejection of such Bids in which the Bidder is interested. If there are reasonable grounds for believing that collusion exists among the Bidders, the Bids of participants in such collusion will not be considered.

The foregoing reasons for rejection of Bids are not intended to be exhaustive.

13. OPENING OF BIDS

Bids will be opened publicly on the date and at the location and time specified in the Invitation to Bid. Bids will be read aloud and an abstract of the amount of the base Bids will be made available after the opening of the Bid.

14. BIDS TO REMAIN OPEN

All bids shall remain open for sixty (60) calendar days after the day of the Bid opening, but the TOWN may, at its sole discretion, release any Bid and return the Bid Security prior to that date.

Extensions of time when Bids shall remain open beyond the sixty (60) day period may be made only by mutual written agreement between the TOWN, the successful Bidder and the surety, if any, for the successful Bidder.

15. AWARD OF CONTRACT

If the contract is to be awarded, it will be awarded to the most responsible and responsive Bidder for the base Bid whose evaluation by the TOWN indicates to the TOWN that the award will be in the best interests of the TOWN and not necessarily to the lowest Bidder.

Criteria utilized by the TOWN for determining the most responsible and responsive Bidder includes, but is not limited to the following:

Ability of the Bidder to meet published specifications.

The Bidder's experience and references including, but not limited to, the reputation, integrity, character, efficiency, experience, skill, ability and business judgment of the Bidder, the quality of performance of the Bidder under previous contracts, any sub-contractors and other persons providing labor or materials to the Bidder.

The Bidder's qualifications and capabilities, including but not limited to, the size, financial history, strength and stability of the business to perform the work of the Contract, the possession of necessary facilities and equipment and the quality, availability and adaptability thereof to the particular use(s) required.

Whether the Bidder can perform the Contract promptly or within the time specified without delay or interference.

Previous and existing compliance by the Bidder with laws, ordinances and regulations relating to the commodities or services.

Price.

If applicable, the Bidder to whom award is made shall execute a written Contract prior to award by the Board of Selectmen. If the Bidder to whom the first award is made fails to enter into a Contract as herein provided, the Contract may be let to the next Bidder who is responsible and responsive in the opinion of the TOWN.

16. CONTRACT DOCUMENTS

Any contract resulting from this solicitation shall include the following which are incorporated herein: (a) Invitation to Bid; (b) Instructions to Bidders; (c) Additional Instructions to Bidders; (d) Applicable Contract attached hereto; and (e) Indemnification Agreement.

17. OPEN-END CONTRACT

No guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open-end Contract. Estimated quantities will be used for Bid comparison purposes only. The TOWN reserves the right to issue purchase orders as and when required, or, issues a blanket purchase order for individual agencies and release partial quantities or any combination of the proceeding.

ORDERING: The TOWN reserves the right to purchase commodities/services specified herein through Contracts established by other governmental agencies or through separate procurement actions due to unique or special needs. If an urgent delivery is required within a short period than the delivery time specified in the Contract, and if the seller is unable to comply therewith, the TOWN reserves the right to obtain such delivery from others without penalty or prejudice to the TOWN or to the Bidder.

CONTRACT PERIOD: The initial Contract period shall start with the expiration date of the previous Contract or date of award, whichever is latest, and shall terminate one (1) year from that date. The TOWN may renew this Contract for up to three (3) years in one-year increments subject to the Bidder's acceptance, satisfactory performance and determination that renewal will be in the best interest of the TOWN. All prices, terms and conditions shall remain firm for the initial period of the Contract and for any renewal period unless subject to price adjustment specified as a "special condition" hereto.

18. SAMPLES AND DEMONSTRATIONS

Samples, when required, must be submitted within the time specified at no expense to the TOWN. Such samples are to be furnished to the TOWN upon request after the date of the bid opening only, unless otherwise stated in the Bid Documents. If samples are requested, the Bidder shall deliver the samples to the TOWN no later than seven (7) days after formal request is made. Each individual sample must be labeled with the Bidder's name and manufacturer's brand name and number. When required, the TOWN may request full demonstrations of any unit(s) bid prior to the award of any contract. If the samples are not used in testing or destroyed, upon written request of the Bidder, the TOWN shall within thirty (30) days of bid award, return the samples to the Bidder.

19. INSURANCE

The insurance requirements contained in this Bid represent the minimal protection necessary for the TOWN as determined by the TOWN. The successful Bidder shall be required to provide proper proof of issuance to the Town Manager prior to award. Further modification of the requirements may be made at the sole discretion of the TOWN if circumstances warrant.

20. TAXES

The successful Bidder shall pay all applicable sales, consumer use and other similar taxes required by law.

21. AUDIT RIGHTS

The TOWN reserves the right to audit the records of the successful Bidder for the commodities and/or services provided under the Contract at any time during the performance and term of the Contract and for a period of three (3) year after completion and acceptance by the TOWN. If required by the TOWN, the successful Bidder agrees to submit to an audit by an independent certified public accountant selected by the TOWN. The successful Bidder shall allow the TOWN to inspect, examine and review the records of the successful Bidder in relation to this contract at any and all times during normal business hours during the term of the Contract.

22. CONFLICT OF INTEREST

Bidders must disclose with their Bid the name of any officer, director, partner, proprietor, associate or agent who is also a public officer or employee of the TOWN or any of its agencies. Further, all Bidders must disclose the name of any public officer or employee of the TOWN who owns, directly or indirectly, an interest of five percent (5%) or more in the Bidder's firm or any of its branches or affiliate companies.

23. NON-COLLUSIVE AFFIDAVIT

Each Bidder shall complete the Non-Collusive Affidavit and include it with the Bid Form and shall submit this Form with the Bid. Failure of the Bidder to submit these documents may be cause for rejection of the Bid.

24. SUMMARY OF DOCUMENTS TO BE SUBMITTED BY BIDDERS

The following is a summary of documents, copies of which may be included in the Bid documents, which are to be completed and submitted by Bidders:

Bidder Acknowledgement

Bid Proposal

Reference Information

Certified Resolution or other duly executed document evidencing authority to sign on behalf of the Bidder.

Non-Collusion Affidavit

Indemnity Agreement

Certificate(s) of Insurance

ADDITIONAL INSTRUCTIONS TO BIDDERS
Meeting House Tower Project

1. QUALIFICATIONS OF BIDDERS

Each Bidder shall provide at least three references familiar with its work experience and expertise in the area ("References"), and shall submit the same with the Bid. The Bidder shall also provide the name, address and phone numbers of each reference. Failure to submit the References and all documents required thereunder together with the Bid will constitute grounds for rejection of the Bid.

The TOWN reserves the right to make a pre-award inspection of the Bidder's facilities and equipment prior to award of Agreement.

The TOWN reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in determining a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination. Bidder shall submit with Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidder shall notify the TOWN immediately of notice of any citation or violation which the Bidder may receive after the Bid opening date and during the time of performance of any contract awarded to Bidder.

2. SAFETY

The Successful Bidder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Successful Bidder shall comply with applicable state and federal rules and regulations.

The Successful Bidder shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:

All employees on the work site and all other persons who may be affected thereby.

The work and all materials and equipment incorporated therein.

Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of the work.

3. WARRANTIES

Warranty of Title: The Successful Bidder warrants to the TOWN that all goods and materials furnished under the Contract will be new unless otherwise specified and that the Successful Bidder possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

Warranty of Specifications: The Successful Bidder warrants that all goods, materials and workmanship furnished, whether furnished by the Successful Bidder or its sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.

Warranty of Merchantability: The Successful Bidder warrants that the goods to be supplied pursuant to the Contract are merchantable, of good quality and free from defects, whether patent or latent in material or workmanship. All materials shall be new unless otherwise specified.

Warranty of Material and Workmanship: The Successful Bidder warrants all material and workmanship from date of completion and acceptance by the TOWN. If after acceptance by the TOWN, any of the work is found to be defective or not in accordance with the Contract, the Successful Bidder shall after receipt of a written notice from the TOWN to do so, promptly correct the work unless the TOWN has previously given the Successful Bidder a written acceptance of such condition.

The Successful Bidder warrants to the TOWN that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

The Successful Bidder warrants to the TOWN that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

The Successful Bidder warrants to the TOWN that the consummation of the work provided for in the Contract will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the Successful Bidder is a party.

The Successful Bidder warrants that there has been no violation of copyrights or patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

All warranties made by the Successful Bidder together with service warranties and guarantees shall run to the TOWN and the successors and assigns of the TOWN.

4. RISK OF LOSS

The risk of loss, injury or destruction, regardless of the cause of the casualty, shall be on the Successful Bidder until the delivery of goods and completion of the work at the various work sites stated in the Bid, and inspection and acceptance of the goods by the TOWN. Title to the goods shall pass to the TOWN upon delivery and acceptance by the TOWN.

5. PERMITS, FEES AND NOTICES

The Successful Bidder shall secure all permits and licenses which may be required for the proper execution and completion of the work. The Successful Bidder shall use its best efforts to obtain all necessary permits as soon as possible after the date of Contract commencement. Any delays in obtaining permits must be brought to the attention of the Town Manager without delay.

The Successful Bidder shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work. The TOWN shall not be responsible for monitoring the Successful Bidder's compliance with any laws or regulations.

6. CLEANING UP

The Successful Bidder at all times shall keep the premises free from accumulation of waste materials or rubbish caused by the Successful Bidder's operations. At the completion of the work the Successful Bidder shall remove all waste materials and rubbish from and about the site as well as all tools, equipment, machinery and surplus materials and provide final cleaning and return the space to a condition suitable for use by the TOWN.

See the specifications and requirements section of this bid package for additional detailed clean-up procedures.

7. DEFAULT

In the event the Successful Bidder shall default in any of the terms, obligations, restrictions or conditions in the Contract, the TOWN shall give the Successful Bidder written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event the Successful Bidder has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of the TOWN, the TOWN shall have all legal remedies available to it, including, but not limited to termination of the Contact in which case the Successful Bidder shall be liable for all procurement and reprocurement costs and any and all damages permitted by law arising from the default and breach of the Contract.

8. COMPENSATION TO BE PAID SUCCESSFUL BIDDER

When the Successful Bidder completes the performance of the Contract to the satisfaction of the Department of Public Works in its sole discretion, the TOWN shall pay and the Successful Bidder shall accept as full consideration for the performance of the Successful Bidder’s obligations, the amount set forth in the attached proposal, which shall be integrated in the price for any bid and/or contracted for, unless otherwise noted or specified, shall include full compensation for all materials, equipment, tools, labor and incidental work necessary to complete the work. The price shall include, without exception, all royalties and costs arising from patents, trademarks, or copyrights, which are in any way in the work.

9. TERMINATION FOR CONVENIENCE OF THE TOWN

Upon seven (7) calendar days written notice delivered by certified mail, return receipt requested, to the Successful Bidder, the TOWN may without cause and without prejudice to any other right or remedy, terminate the Contract for the TOWN's convenience whenever the TOWN determines that such termination is in the best interest of the TOWN. Where the Contract is terminated for the convenience of the TOWN the notice of termination to the Successful Bidder must state that the contract is being terminated for the convenience of the TOWN under the termination clause and the extent of termination. Upon receipt of the notice of termination for convenience, the Successful Bidder shall promptly discontinue all work at the time and to the extent indicated on the notice of termination, terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the Contract and refrain from placing further orders and sub-contracts except as they may be necessary, and complete any continued portions of the work.

If, after the notice of termination, it is determined that said cause was invalid, the termination shall be deemed to have been effected for the convenience of the Town. In such event, adjustment shall be made as provided.

Any termination or suspension of the Contract shall not impair the Town's right to recover damages occasioned by the fault of the Contractor. Any suspension shall not limit the right of the Town to terminate

10. TERMINATION – FORCE MAJEURE

Neither party shall be liable to the other and deemed to be in breach under the Contract for any failure to perform, including with limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance will be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

11. TERMINATION – PERFORMANCE DATES

It is agreed, however, that since the performance dates of the Contract are important, continued failure to perform for periods aggregating sixty (60) days or more, even for causes beyond the control of the contractor, shall be deemed to render performance impossible and the Town shall thereafter have the right to terminate the Contract in accordance with the provisions of the above.

12. TERMINATION – INCOMPLETE PERFORMANCE

In the event of termination, all finished work and documentation, complete and incomplete, shall be delivered to the Town. The contractor shall be entitled to receive payment for any work performed and accepted under the Contract which was completed prior to the date of termination. In the event of termination prior to the completion of the work, the contractor shall have no right to payment for lost profits or other consequential damages.

13. TERMINATION – INADEQUATE FUNDS

In the event that all or a portion of the project is postponed or terminated due to inadequate federal, state, or local funds, the provisions set forth in the above paragraph (Termination for Convenience) shall apply.

14. ASSIGNMENT

The Successful Bidder shall not assign or transfer its rights, title or interests in the Contract nor shall Successful Bidder delegate any of the duties or obligations undertaken by Successful Bidder without the TOWN'S prior written approval.

15. APPLICABLE LAWS, ORDINANCE, RULES, CODES AND REGULATIONS

Familiarity with Laws: Notice is hereby given that the Successful Bidder must be familiar with all Federal, State and Local Laws, ordinances, rules, codes and regulations that may affect the work. Ignorance on the part of the Bidder will in no way relieve him from the responsibility of compliance therewith.

16. BID SECURITY

Each Bid must be accompanied by a certified or cashiers check or by a Bid Bond made payable to the TOWN on an approved form, duly executed by the Bidder as principal and having as surety thereon a surety company acceptable to the TOWN and authorized to write such Bid Bond under the laws of the State of New Hampshire, in an amount not less than five percent (5%) of the amount of the Bid.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Contract and furnished the required payment and performance bonds, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Bonds within fifteen (15) calendar days of the Notice of Award, the TOWN may annul the Notice of Award and the entire sum of the Bid Security shall be forfeited. The Bid Security of the three (3) lowest bidders will be returned within seven (7) calendar days after the TOWN and the Successful Bidder have executed the written Contract or if no such written Contract is executed within ninety (90) calendar days after the date of the Bid opening, upon the demand of any Bidder at anytime thereafter, provided that he has not been notified of the acceptance of his Bid. Bid Security of all other Bidders will be returned within seven (7) calendar days after the Bid opening. The attorney in fact or other officer who signs a Bid Bond for a surety company must file with such a Bond a certified copy of his power of attorney authorizing him to do so.

The Bid Security filed with the Bid shall be forfeited in its entirety to the TOWN as liquidated damages if the Bidder to whom the Contract is awarded fails to execute the Contract Documents within fifteen (15) calendar days of the Contract Award.

17. PAYMENT AND PERFORMANCE BONDS

Within Fifteen (15) calendar days after the Contract Award, but in any event prior to commencing work, the Successful Bidder shall execute and furnish to the TOWN a performance bond and a payment bond, each written by a corporate surety, licensed and authorized to do work in the state of New Hampshire and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR, Section 223.10, Section 223.11). Further, the surety company shall provide the TOWN with evidence satisfactory to the TOWN, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualifications for Financial Stability and Financial Size in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

Two (2) separate bonds are required and both must be approved by the TOWN. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the Contract. The performance bond shall be conditioned that the Successful Bidder perform the Contract in the time and manner prescribed in the Contract. The payment bond shall be conditioned that the Successful Bidder promptly make payments to all persons who supply the Successful Bidder with labor, materials and supplies used directly or indirectly by the Successful Bidder in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the TOWN to the extent of any and all payments in connection with the carrying out of said contract which the TOWN may be required to make under the law.

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Contract Price, or an additional bond shall be conditioned that the Successful Bidder correct any defective or faulty work or material which appear within one (1) year after final completion of the Contract, upon notification by the TOWN.

Payment and performance bonds will be required for the initial one (1) year Contract time period only. The TOWN reserves the right to require bonding for the two contract renewal time periods.

18. INDEMNIFICATION

GENERAL INDEMNIFICATION: To the fullest extent permitted by laws and regulations, Successful Bidder shall indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the operations of the Successful Bidder or his Subcontractors, agents, officers, employees or independent contractors pursuant to or in the performance of the contract.

PATENT AND COPYRIGHT INDEMNIFICATION: The Successful Bidder agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Contract.

The Successful Bidder shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

The TOWN reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Successful Bidder under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive the TOWN'S rights and immunities under the common law or New Hampshire laws as amended from time to time.

19. INSURANCE

Bidders must submit copies of their current certificate(s) of insurance prior to execution of the Contract. Failure to do so may cause rejection of the Bid.

PRIOR TO AWARD OF THE CONTRACT, THE SUCCESSFUL BIDDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE TOWN OF JAFFREY IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE SUCCESSFUL BIDDER UNDER THE CONTRACT. Insurance Companies selected must be acceptable to the TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the TOWN by certified mail.

The Successful Bidder shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability:

Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employer's Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars ($100,000.00) per

accident. Successful Bidder shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Successful Bidder in the performance of the work with the following minimum limits of liability:

$1,000,000	Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

Comprehensive General Liability with the following minimum limits of liability:

$1,000,000	Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence

Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage:

Premises and Operations;

Independent Contractors;

Product and Completed Operations Liability;

Broad Form Property Damage;

Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract; and

Personal Injury coverage with employment contractual exclusions removed and deleted.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of New Hampshire, with the following minimum qualifications of Financial Stability B+ to A+ in accordance with the latest edition of A.M. Best's Insurance Guide:

The Successful Bidder shall require each of its sub-contractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One Million Dollars, $1,000,000 for each category), and the Successful Bidder shall provide verification thereof to the TOWN upon request of the TOWN.

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.

The Successful Bidder shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against the TOWN for payment or assessments in any form on any policy of insurance.

The clauses "other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which the TOWN is named as an additional named insured shall not apply to the TOWN. The TOWN shall provide written notice of occurrence within fifteen (15) working days of the TOWN's actual notice of such an event.

The Successful Bidder shall not commence work under the Contract until after he has obtained all of the minimum insurance herein described.

The Successful Bidder agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of the TOWN.

Violation of the terms of this paragraph and its sub-parts shall constitute a breach of the Contract and the TOWN, at its sole discretion, may cancel the Contract and all rights, title and interest of the Successful Bidder shall thereupon cease and terminate.

20. AWARD OF CONTRACT

If the Contract is to be awarded, it will be awarded to the most responsible and responsive Bidder for the Bid whose evaluation by the TOWN indicates to the TOWN that the award will be in the best interests of the TOWN, and not necessarily to the lowest Bidder.

Criteria utilized by the TOWN for determining the most responsible and responsive Bidder includes, but is not limited to the following:

Ability of Bidder to meet published specifications.

Bidder's experience and references, including but not limited to, the reputation, integrity, character, efficiency, experience, skill, ability and business judgment of the Bidder, the quality of performance of Bidder under previous contracts, any sub-contractors and other persons providing labor or materials to the Bidder.

Bidder's qualifications and capabilities, including but not limited to, the size, financial history, strength and stability of the business to perform the work of the Contract, the possession of necessary facilities and equipment and the quality, availability and adaptability thereof to the particular use(s) required.

Whether the Bidder can perform the Contract promptly or within the time specified, without delay or interference.

Previous and existing compliance by the Bidder with laws, ordinances and regulations relating to the goods or services.

Price.

If applicable, the Bidder to whom award is made shall execute a written Contract within Ten (10) calendar days after the Contract Award. If the Bidder to whom the first award is made fails to enter into a Contract as herein provided, the award may be annulled and the Contract let to the next lowest Bidder who is responsible and responsive in the opinion of the TOWN. Such Bidder shall fulfill every stipulation embraced herein as if he were the original party to whom the award was made.

21. TIME FOR BEGINNING & COMPLETING OF THE WORK

The Successful Bidder shall commence work within ten (10) days after the date specified in the Notice to Proceed, given to it by the Town Manager or designated town employee, to commence work and it shall complete the work within the time specified.

22. COST ADJUSTMENTS (Open End Contracts)

The cost(s) shall remain firm for the initial one (1) year contract term. Costs for any extension term shall be subject to adjustment only if increases occur in the industry. Such increases shall not exceed 5% or, whichever is greater, the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor. The yearly increase or decrease, in the CPI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the comparable month one year prior. Any requested cost increase shall be fully documented and submitted to the TOWN at lease ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the Contract. In the event the CPI or the industry costs decline, the TOWN shall receive, from the Successful Bidder a reduction in costs, in accordance with the terms and conditions for adjustments detailed above. Only one cost adjustment will be allowed per contract time period.

23. ENTIRE AGREEMENT

This Contract contains the entire understanding of the parties and supersedes all previous verbal and written agreements; there are no other agreements, representations or warranties not set forth herein. In the event any portion of this Contract shall be declared by any court of competent jurisdiction to be invalid or unenforceable, then the parties agree that such invalid or unenforceable portion shall be severable and the Contract shall be treated as though that portion had never been part of this Contract.

24. LIQUIDATED DAMAGES.

The TOWN and Successful Bidder recognize that time is of the essence of this Contract and that the TOWN will suffer loss if the project is not completed within the time specified, plus any extensions thereof allowed.

They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the TOWN if the project is not completed on time. The TOWN and Successful Bidder recognize, agree, and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the TOWN would suffer in the event Successful Bidder neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the TOWN and Successful Bidder agree that as liquidated damages for delay (but not as a penalty) Successful Bidder shall pay the TOWN One Hundred Dollars ($100.00) for each day that expires after the time specified in bid package and contract for substantial completion until the project is substantially complete. If Successful Bidder shall neglect, refuse or fail to complete the remaining project within the time specified or any proper extension thereof granted by the TOWN within the time or any proper extension thereof granted by the TOWN, Successful Bidder shall pay the TOWN One Hundred Dollars ($100.00) for each day that expires after the time specified in bid package and Contract for completion and readiness for final payment.

25. ATTORNEY'S FEES

In the event it becomes necessary for the TOWN to seek legal means to enforce the terms of this agreement, the contractor will be liable for all reasonable litigation fees and costs incurred by the TOWN in the prosecution or defense of such action, or in any post-judgment or collection proceedings. This shall include any bankruptcy proceedings filed by or against the Successful Bidder.

26. EMPLOYEES TO BE COMPETENT

The contractor shall employ only competent people to this work and whenever the Town shall notify the contractor that anyone on the work is incompetent, unfaithful, disorderly or otherwise unsatisfactory, such employee shall be discharged from work on this Contract and shall not again be employed on it, except with the consent of the Town.

27. DELAY OR HINDRANCE

The contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of the contractor, an extension of time shall be the contractor's sole remedy.