

REQUEST FOR PROPOSALS

ISLAND END RIVER FLOOD RESILIENCE PROJECT

ON-CALL CONTRACTS FOR GRANT ADMINISTRATION, DESIGN, PERMITTING, AND PRE-CONSTRUCTION SERVICES

Everett, Massachusetts

JUNE 20, 2023



DEPARTMENT OF ENGINEERING
EVERETT CITY HALL
484 BROADWAY
EVERETT, MASSACHUSETTS 02149

1.0 INTRODUCTION

The communities of Everett and Chelsea have been working together developing flood resiliency in the Island End River floodplain and associated stormwater watershed area. The City of Everett wishes to receive proposals and costs submittal elements from design firms or teams to assist them with the full design lifecycle of the project for the Island End River Flood Resilience project in Chelsea and Everett. Interested applicants are invited to submit proposals and rate schedules that would apply over a three-year contract term for associated work in the Island End River floodplain and associated stormwater watershed area to support this effort. Work is anticipated to include some or all of the following tasks:

1. managing the administration of the grants,
2. conceptual design and land use master planning,
3. record data collection and research,
4. survey, site investigation, and other exploratory geotechnical/environmental field work,
5. advancing design work on coastal flood protection systems and nature-based solutions;
6. local, state, and federal permitting to support proposed design,
7. stakeholder engagement and public outreach, and
8. coordination with local, state, federal, and other agencies.

The effort will include communication with the many stakeholders in the area. With two municipalities, various private interests, multiple state and federal regulating authorities, and advocacy groups involved in work in this region, it is necessary to engage a diverse set of stakeholders.

DETERMINATION TO USE THE RFP PROCESS:

The RFP process will enable the city to provide higher ratings to consultants whose key project personnel have extensive experience providing similar services to other cities and towns.

2.0 GENERAL TERMS AND CONDITIONS

The following are the terms and conditions of the RFP:

1. The city may cancel this RFP, in whole or in part, or may reject all submittals submitted in response, or may procure only some goods and/or services outlined in this RFP whenever such action is determined to be fiscally advantageous to the city or if it is otherwise in the best interest of the city.
2. The City may request that supplementary information be furnished to assure the City that an Applicant has the technical competence, the business organization, and the financial resources adequate to successfully perform the necessary work.

3. Questions/clarifications rising from these documents shall be submitted to the Allison.jenkins@ci.everett.ma.us in writing.
4. Each Applicant shall acknowledge receipt of any and all addendum issued to the Request for Submittal by so indicating in the Cover Letter/General Response. Failure to do so shall be cause to reject the submittal as being unresponsive.
5. The Applicant shall sign the submittal correctly in ink or in the case of an organization, firm, partnership or corporation, a person having the legal authority from said organization to sign the submittal will sign the document.
6. Applicants may correct, modify or withdraw the original submittals on or before the date and time as stated in the “Legal Advertisement”. Corrections or modifications shall be in sealed envelopes, clearly marked to indicate the contents, with the name and address of the vendor. Any late correction or modification to the submittal will not be accepted. An Applicant who wishes to withdraw a submittal must make a request in writing before the date and time of acceptance.
7. Each Applicant shall be presumed to have read and be thoroughly familiar with these documents. Unfamiliarity with these documents shall in no way relieve any Applicant from any obligation in respect to his/her submittal.
8. It is understood that the firm/individual’s Submittal to the City to provide said services will remain valid for 90 days past the submission deadline.
9. All costs involved in preparing the Submittal will be borne by the vendor; the city will not be liable for any costs associated with the creation of the Submittal.
10. Any submittal received after the date and time stated in the Legal Advertisement will be deemed non-responsive and shall not be opened. Unopened submittals will be returned to the Applicant.
11. The evaluation of the submittals will be conducted by a committee appointed by the Chief Procurement Officer. The judgment of the evaluators will be based upon the evaluation criteria and shall be final.
12. The submittals will be opened on the date and at the time stated in the Legal Advertisement and the name of the person or organization submitting a submittal will be read and recorded. The contents of all submittals will be opened privately and not be disclosed to the public or competing Applicants until the evaluation process is completed. A register of submittals will be completed indicating the name of the Applicant. This register may be viewed upon request. The names of the witnesses will also be recorded.

Any contract(s) resulting from this RFP shall be awarded to the Applicant(s) who is deemed a responsive and responsible management consultant submitting the most advantageous proposal, taking into consideration the management consultant's experience, staff capacity, references and plan for providing the services, as well as the proposal price.

13. The Evaluation Committee will be the sole judge in determining whether an Applicant's submittal satisfies the requirements of this RFP and whether or not the Submittal will prove advantageous to the city.
14. Response to this RFP acknowledges the Applicant's acceptance of all sections and requirements of this document. The RFP will be written into the successful firm/individual's submittal as part of the contract.
15. Services provided by the successful Applicant(s) shall be rendered through the City's standard contract for management services; the successful Applicant will not be considered an employee of the City and will not receive any benefits of an employee.
16. The successful Applicant(s) must save, keep, hold harmless and fully indemnify the City and its officers or agents from all damages or claims for damages, costs, or expenses in law or equity that may at any time arise or be set up for any infringement of patent rights, copyright, or trademark of any person or persons in consequence of the use by the City of items supplied under its submittal.
17. Respondents that intend to submit a response are prohibited from contacting any of the Owner's staff other than the Procurement Officer. An exception to this rule applies to Respondents that currently do business with the Owner, but any contact made with persons other than the Procurement Officer must be limited to that business, and must not relate to this RFP. In addition, such respondents shall not discuss this RFP with any of the Owner's consultants, legal counsel or other advisors.

FAILURE TO OBSERVE THIS RULE MAY BE GROUNDS FOR DISQUALIFICATION.

3.0 CONTRACT AND SUBMITTAL INFORMATION

3.1 Submittal Preparation

Prospective consultants are to follow the instructions contained in Section 5.0 (Submittal Requirements) of this document when preparing and submitting their response to the RFP.

3.2 Economy of Preparation

Submittals should be prepared simply, and provide a straightforward description of the prospective consultant's ability to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of contents.

3.3 Cost Liability

The City of Everett assumes no responsibility and no liability for costs incurred relevant to the RFP by prospective consultants prior to issuance of a contract.

3.4 Revisions to the Request for Submittal

In the event it becomes necessary to revise any part of this RFP, revisions will be provided to all who received the RFP. The City of Everett shall bear no responsibility or liability due to copies of revisions lost in mailing or not delivered to a prospective consultant due to unforeseen circumstances.

3.5 Submittal Submission

When submitted, submittals are to follow Section 4.0 (Scope of Work), including the outline.

3.6 Insurance Requirements

The obtaining of the insurance certificate(s) shall be a condition precedent to the effectuation of the contract. The premiums for this insurance coverage shall be paid for by the Vendor. The insurance shall remain in force during the full term of the contractual agreement and/or until all work is completed and accepted by the Town. The Town is to be named as an additional insured, and is to be given notice prior to any changes or lapses of insurance coverage.

General Liability: At least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit

Workers' Compensation Insurance: Per M.G.L. c. 152 as amended.

Property Coverage: for materials and supplies being transported by the Vendor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.

Umbrella Liability: of at least \$2,000,000/ occurrence, \$2,000,000/aggregate.

3.7 Response Date

In order to be considered for selection, signed submittals must be submitted to Allison Jenkins, Chief Procurement Officer, City of Everett, Room 14, 484 Broadway, Everett, MA 02149 **no later than July 17, 2023 @ 1 p.m. (Eastern Standard Time)**. Prospective consultants should allow for normal mail delivery time to ensure timely receipt of their submittals by the City of Everett. Any submittal delivered to the Purchasing Department will not be considered for this RFP.

3.8 Distribution of Submittals

In order to be considered for selection, prospective consultants should submit a complete response to the RFP. One original hardcopy and 5 copies must be submitted to the Chief Procurement Officer, City of Everett, Room 14, 484 Broadway, Everett, MA 02149.

The prospective consultant shall make no other distribution of the submittals. Submitted submittals become the property of the City of Everett.

3.9 Selection of Submittals

The City of Everett shall award up to three professional consulting awards to the responsible prospective consultants whose submittals conform to the Request for PROPOSALS (RFP), are most advantageous to the City of Everett, and meet the requirements as stated in Section 5.0 (Submittal Requirements).

The selected consultants will ultimately be required to sign a contract with the City of Everett for assigned tasks in which they accept responsibility for the performance of services as stated in their task order and be prepared to commence work immediately upon execution of the signed contract and receipt of a Notice to Proceed.

3.10 Acceptance of Submittal Content

The contents of the submittal of the successful consultant and this RFP, in whole or in part, shall form the base of any contracts that are awarded.

3.11 Not used

3.12 Subcontracting

None of the services to be provided by the consultant pursuant to any contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership, or any other such entity without the prior approval of the City of Everett. All intended subcontracts shall include provisions, which are functionally consistent with the language of this Request for PROPOSALS.

3.13 Assignment

The successful consultant is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without prior written consent and approval by the City of Everett.

3.14 Price Change

All prices shall be firm and not subject to increase during the period of this contract, except upon written consent and approval by the City of Everett.

3.15 Ownership of Material

All rights, titles to and ownership of all data, material, and documentation resulting from this project and/or prepared for the City pursuant to this contract shall remain exclusively with the City. The prospective consultant shall be paid for all service as will be specified in the contract.

3.16 Access to Records

In addition to terms stated elsewhere in the RFP, the City of Everett or any of its duly authorized representatives shall have access, upon demand, to any books, documents, papers and records of the successful consultant which are directly pertinent to this contract, for the purposes of making audit examinations, excerpts, and transcriptions. The successful consultant shall insert identical rights of access for these parties into any subconsultant agreement the successful consultant enters into under this contract. This right shall be reserved by the City of Everett for the term of the contract and for three (3) years from the date of final payment.

3.17 Compliance with Federal, State, and Local Laws

A contract between the City and the consultant will be subject to and be in accordance with all Federal, State and Local laws as may be applicable. The consultant, in designing the work plan, must take into account compliance with all applicable regulations. Consultants are advised to review all applicable Federal, State and Local regulations prior to submitting a submittal.

4.0 SCOPE OF WORK

The City of Everett has developed the current solicitation in the form of a Request for Qualification (RFP). Interested applicants are invited to submit PROPOSALS, labor rate ranges by level and discipline, direct labor multipliers for overhead and profit, and markup rates for subconsultants and reimbursable expenses that would apply over a three-year contract term for associated work in the project area to support the following tasks:

Grant Administration Services

- Assist the City in its necessary administration of FEMA, EEA, or other potential grant processes throughout the life of the grant funding period, including preparation of content for monthly/quarterly reports, engagement with funding agency staff, and conformance to all terms and conditions as they relate to design and engineering phase services.
- Assist in the completion of other potential grant application(s) for services to be rendered to meet work outlined in this Request for PROPOSALS (RFP). Under this task, the selected consultant(s) shall be responsible for preparing graphical content, illustrative plans, technical narratives, cost estimates, program budgets, and project schedules. The selected firm or team shall be familiar with various available grant opportunities, assume that time is of the essence, and should be prepared to meet grant deadlines accordingly.

Design Services

Advance design development and final design for work outlined in this RFP. Design work may include, at a minimum, the following:

- *Survey and Data Collection*
 - The City has expedited the design process for certain projects identified herein by securing professional services ahead and outside of this solicitation to develop base mapping and related survey information along the project corridor. The selected consultant will review this information and advise the city on missing information as applicable.
 - If necessary, supplement the base mapping with additional survey information.
 - As needed, identify land and/or easement needs and complete appraisals of potential land takings.
- *Design Development*
 - Advance preliminary design (25%) for each project through final design, including review submittals to the City at 60%, 90%, and 100%.
 - Coordinate with City on the review documents at the various stages of project development and incorporate City, public agency, and stakeholder feedback
 - Generate 100% design plan documents, technical specifications, cost estimates, and, if applicable, right-of-way plans and easement documents. The 100% design plan documents and specifications should be finalized and stamped by a Massachusetts Registered Professional Engineer.
 - As stated above, the City expedited the design process for certain projects identified herein by securing professional services ahead and outside of this solicitation to perform Hydrologic & Hydraulic (H/H) analysis for use in associated projects. H/H results will represent modeling efforts in both Chelsea and Everett tributary to the Island End River / Market Street Culvert area.

Environmental Services

The City intends to expedite the design process for certain projects identified herein by securing professional services ahead and outside of this solicitation to collect subsurface geotechnical and environmental data for soils and groundwater and related environmental information along the project corridor.

- Under the auspices of the Licensed Site Professional in charge the selected consultant will review this information and advise the city on missing information as applicable. If necessary, supplement City data with additional data.

- Under the auspices of the Licensed Site Professional in charge, prepare and submit necessary regulatory filings to attain compliance with the Massachusetts Contingency Plan, M.G.L. c. 21E, and applicable local, state, and federal regulations.
- As assigned, undertake the following activities, in connection with these projects: Release Abatement Measure status and completion reports, Utility Related Abatement Measure status and completion reports, Phase I/II reports, Permanent and Temporary Solution Reports, Activity and Use Limitations, and other remedial and environmental management activities pursuant to the Massachusetts Contingency Plan, M.G.L. c. 21E, and applicable local, state, and federal regulations.
- Formulate environmental management specifications, review environmental submittals, oversee implementation of health and safety plans, and ensure implementation of provisions to maintain public health and safety.
- Coordinate with MassDEP, EPA, and relevant agencies to assure project feasibility and compliance.
- Monitor timelines associated with regulatory processes and ensure all subsequent filings, as required, are submitted in a timely fashion to maintain compliance.

Permitting Services

- Review and analysis of applicable regulations and permitting requirements, including, but not limited to, Ch. 91, Designated Port Area, Wetlands Protection Act (M.G.L. c. 131), National Historic Preservation Act, local state historic preservation requirements, Clean Water Act (including, but not limited to, Sections 401 and 404), Army Corp of Engineers Construction General Permit requirements, and all other applicable local, state, and federal permitting requirements.
- Coordinate with various local, state, and federal regulatory authorities to determine what will be required to secure required permits and address the most challenging or critical permitting elements of the selected alternative.
- Incorporate findings of permitting analysis and regulatory authority feedback.
- Advise City as to permitting risks and methods of minimizing and/or mitigating such risks to the projects.
- Prepare and file all required applications and supporting materials. Permitting schedule will be prepared to support the project for ongoing grant planning.
- Coordinate site inspections, periodic reports, and routine communications with regulatory authorities.
- Oversee and ensure compliance with all permit conditions through all phases of the project, in coordination with the City, regulatory authorities, and selected construction contractor.

Stakeholder Engagement

- Coordinate and host public meetings, design workshops, and stakeholder meetings to solicit input from stakeholders.
- Prepare materials for engagement activities, including, but not limited to meeting agendas, presentations, graphical content, and public correspondence, for translation.
- Coordinate translation and interpretation services.
- Devise and implement a process to maintain regular, proactive communications with stakeholders to convey project information throughout design and construction phases. Field and respond to public inquiries in a timely fashion, while keeping the city apprised as to all public feedback.

5.0 SUBMITTAL REQUIREMENTS

The City of Everett requires that each consultant follow the guidelines for submittal format and content so that the evaluation and selection process can occur in an orderly, timely and equitable manner.

The city is seeking competitive labor rates, overhead and profit multipliers, and expense markups. These costs and financial data will be used as the City carefully negotiates project scopes and fees issued to the selected firm(s) or team(s). There should be one (1) original and five (5) copies of the Technical/Non-Price Proposal sealed in one envelope and a separate sealed “Price Proposal” outlining staff positions, hourly rates, and direct costs should be submitted as part of the cost proposal in a separate sealed envelope.

Technical/Non-Price Proposal – Envelope 1 sealed and clearly marked

The design firm(s) or team(s) shall submit a sealed envelope clearly marked “**24-05 Technical/Non-Price Proposal**” containing the following:

- Limit the RFP submittal to no more than 10 pages, not including resumes and cover letter.
- Provide a clear and comprehensive understanding of the challenges associated with the projects defined in this RFP, and a solid technical and management approach fully supported by past experiences, proven staff, and insight on project development and execution.
- Limit the RFP submittal to no more than 10 resumes; and each resume to no more than two pages.
- All of the key personnel identified by the proposer shall possess a very high level (10+ years for highly advantageous) of engineering design and construction administration experience and performance. All proposed personnel shall be currently performing functions similar to those proposed and clearly show an adequate level of relevant experience to successfully perform the anticipated project elements outlined herein.
- Include a clear organizational chart showing the various service sectors and key team members.
- Provide references from projects that show experience with the requirements of the RFP for public works engineering projects throughout the last ten years.

Price Proposal – Envelope 2 sealed and clearly marked

The design firm(s) or team(s) shall submit a sealed envelope clearly marked “**24-05 Price Proposal**” containing the following:

- Submit a labor cost matrix showing labor rate ranges by level and discipline.
- Provide a fixed direct labor multiplier for overhead and profit. Note that this rate may not change for additional years.
- Provide a fixed markup rate for subconsultants and reimbursable expenses. Note that this rate may not change for additional years. In addition, the city will not accept markup rates over 7.5%.

Placing the price proposal in the technical/non-price proposal envelope will disqualify the proposal.

PROPOSALS OF DESIGN TEAM

The city will use criteria outlined below to evaluate and compare RFP submissions of each applicant for depth and breadth of experience.

The design firm(s) or team(s) shall provide the following PROPOSALS through examples of projects relating to the following Comparative Evaluation Criteria:

- FEMA, EEA, CZM and other grant administration experience;
- Storm surge flooding protection project design;
- Experience designing complex storm water enhancement and flood mitigation projects in dense, environmentally compromised urban areas;
- Municipal roadway and utility infrastructure project design;
- Environmental permitting involving wetlands and floodplains.
- Experience with Municipal Harbor Plans and Designated Port Areas (DPAs).
- Experience working with private property owners;
- Experience working with utility providers (Eversource, National Grid, etc.).

6.0 REQUIRED CERTIFICATIONS

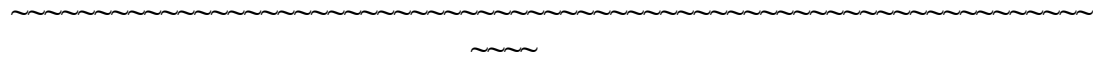
- Certificate of Non-collusion
- Certificate of Tax Compliance

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Name of person signing bid or proposal)

(Name of business)



CERTIFICATE OF TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Printed name of person signing bid or proposal

Signature of person signing bid or proposal

Name of business

*Social Security Number or Federal Identification Number

Date

*Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

Appendix A

GUIDELINES FOR SUBMITTAL EVALUATION

The review committee will evaluate submittals according to the criteria outlined below.

	Highly Advantageous	Advantageous	Not Advantageous
<p>I. Plan of Services Ratings will be based on the project approach and schedule. Particular attention will be given to the methods by which the candidate plans to complete all items in the Scope of Work.</p>	Submittal includes a detailed, logical, and highly efficient scheme for addressing all of the required issues and completing all tasks.	Submittal includes a credible scheme for addressing all of the required issues and completing all tasks.	Submittal is not sufficiently detailed to fully evaluate, or does not contain components necessary to address all the required issues and completing all tasks.
<p>II. General PROPOSALS of Firm Particular attention will be paid to evidence of successful past performance.</p>	Candidate has successfully completed multiple projects of similar size and scope, and has a proven track record for completing projects on time, within budget, and on schedule.	Candidate has completed projects successfully and timely.	Candidate has experienced difficulty in completing projects successfully.
<p>III. Personnel & Resources to be Utilized Rating will be based on evidence that adequate qualified personnel are assigned to all phases of the project, and that sufficient resources are available.</p>	At least one individual from the proposed project staff has substantially contributed to the development of a similar project in a similar community.	At least one individual from the proposed project staff has contributed to, or has experience with a similar project.	None of the project staff has substantially contributed to the development of this type of project.
<p>IV. Experience with similar projects. Rating will be based on experience providing professional services for similar master planning projects.</p>	The firm has at least five years of experience working with cities in master planning projects of similar scope and nature. The Submittal includes at least three examples of similar projects.	The firm has at least three years of experience working with cities in master planning projects of similar scope and nature. The Submittal includes at least one example of a similar project.	The firm has less than three years of experience with this type of project.
<p>V. Fee Rating will be based on the fee provided to complete the project and each project phase outlined.</p>	Submittal includes a fee structure less than the estimated fee structure provided.	Submittal includes a fee structure the same as the fee structure provided.	Submittal includes a fee structure greater than the estimated fee structure provided.

Sample do not return

CONTRACT FOR SERVICES

CITY: CITY OF EVERETT

VENDOR:

PROJECT:

The City hereby accepts the Vendor’s proposal to perform services (“Services”) in connection with the Project in accordance with and subject to: (i) the Terms and Conditions attached hereto as **Exhibit A**; (ii) Scope of Service attached hereto as **Exhibit B**; and (iii) the Price Proposal attached hereto as **Exhibit C**. Collectively, these documents constitute this Agreement.

COMMENCEMENT OF WORK (check applicable box):

- This Agreement constitutes a notice to proceed with services.
- Services shall not be performed under this Agreement until the City so advises the Vendor in writing.

INSURANCE

The Vendor shall obtain and maintain the following insurance in amounts not less than the Minimum Insurance Limits set forth on page one of this Agreement during all times that the Vendor is performing Services and for at least one year after termination of this Agreement in the case of Commercial General Liability, Worker’s Compensation and Employer’s Liability insurance, and for at least the applicable period of limitations on actions provided by law in the case of Professional Liability insurance: With the exception of Workers Compensation coverage, the City of Everett shall be named as an additional insured on all policies of insurance.

Certificates of insurance evidencing the coverage required hereunder All such policies and certificates shall be written through companies and in forms acceptable to the City’s lender or lenders, if any. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the City. In the event that any policy is cancelled or amended, the Vendor shall immediately provide notice to the City and take all steps necessary to reinstate such policy to conform to the requirements of this Agreement. The insurance provided under Terms and Condition Number 8, shall name the City and such other parties as the City shall require as “Additional Insured” parties. Insufficient insurance shall not release the Vendor from any liability for breach of its obligations under this Agreement.

TERM: June 30, 2023 – July 1, 2024, with the option to renew for two additional one (1) year terms at the sole discretion of the City.

Exhibit	A	B	C
Attached	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Not Attached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VENDOR:

Signature

Date Signed

Printed Name

Title

CITY OF EVERETT:

Allison Jenkins
Chief Procurement Officer

Date Signed

Eric Demas
Chief Financial Officer/City Auditor

Date Signed

Account Number: _____

Colleen Mejia, Esq.
City Solicitor

Date Signed

Carlo DeMaria
Mayor

Date Signed

Exhibit A

TERMS AND CONDITIONS

1. PERFORMANCE OF SERVICES

All Services of the Vendor shall be performed by qualified personnel. The employment by the Vendor of additional Subcontractors for any of the Services shall be subject to the prior written approval of the City. No member of the Project team shall be replaced without the consent of the City. The City shall have the right to require the Vendor to remove any personnel from the Project for reasonable cause. The Vendor shall perform its Services in accordance with the highest professional standards of skill, care, and diligence. Without limiting the foregoing, the City shall have the right to require the Vendor to cease providing Services immediately upon written notice.

2. TIME

The Vendor shall perform its Services as expeditiously as is consistent with the standards of professional skill and care required hereby. The Vendor shall perform its Services in coordination with the operations of the City at the Sites specified and with any party engaged by the City in connection with the Project. It shall be the obligation of the Vendor to request any information necessary to be provided by the City for the performance of the Vendor's Services. Time is of the essence of this Agreement.

3. REIMBURSABLE EXPENSES

If out-of-pocket expenses are not included in the Vendor's fee, the City shall compensate the Vendor for reimbursable expenses actually incurred; provided, however, that reimbursable expenses shall only be eligible for reimbursement if they have been submitted in advance and approved in writing by the City. The Vendor agrees to use reasonable efforts to minimize expenses which are reimbursable by the city.

4. VENDOR'S COMPENSATION

- a. Lump Sum. If Services are to be provided on a Lump Sum basis, the total amount of compensation due to the Vendor in consideration of the full performance of Services by the Vendor is the amount set forth on page one of this Agreement. The City shall pay the Vendor as Services are performed by the Vendor based upon the portion of Services completed.
- b. Upset Limit. If Services are to be provided subject to an Upset Limit, the total amount of compensation due to the Vendor in consideration of the full performance of Services by the Vendor shall in no event exceed the amount set forth on page one of this Agreement. Unless otherwise agreed, payments shall be made to the Vendor on a Time Card/Unit Price basis as provided in paragraph c. below, subject to the Upset Limit.

- c. Time Card/Unit Price. If Services are to be provided on a Time Card/Unit Price basis, payments shall be made to the Vendor for Services performed based upon the salary or hourly rate or unit price schedule included in the Proposal or attached as **Exhibit C**. If the agreed rate schedule is not included in the Proposal or attached as **Exhibit C**, the Vendor shall submit to the City, before proceeding with Services, a rate schedule listing the maximum rates to be charged for the various employees or categories of employees performing Services or categories or services. Compensation for services performed by authorized Subcontractors shall be on the basis of the actual costs to the Vendor unless otherwise specified herein or in the Proposal. The Vendor shall use his best efforts to complete the performance of his Services within the Estimated Amount set forth on the first page of this Agreement. The Vendor shall advise the City at such time as the Estimated Amount has been reached. The City shall not be obligated to pay for any amount in excess of the Estimated Amount, unless the City gives the Vendor a written notice authorizing the further performance of Services and the incurring of additional costs for such Services.
- d. No Compensation for Certain Services. Neither the Vendor nor any of its Subcontractors shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Vendor in the preparation of construction documents or other work products, as reasonably determined by the executive head of the City, nor for any services made necessary by the fault or negligence of the Vendor or its Subcontractors.
- e. Subject to Appropriation. The obligations of the City hereunder shall be subject to appropriation on a fiscal year basis. In the absence of appropriation, this agreement shall be terminated immediately without liability of the City for damages, lost profits, penalties, or other charges arising from early termination.

5. PAYMENT

The Vendor shall submit, not more often than monthly, statements for fees for Services rendered and reimbursable expenses (stated separately) incurred. The Vendor's statements shall include a description of the Services performed for the period in question with a progress report, and shall be in such form and detail and with such supporting data as the City may reasonably require to show the computational basis for all charges (including reimbursable expenses), including a statement explaining any substantial deviation from the Vendor's anticipated work schedule, staffing plan and costs. Payment shall be due within thirty (30) days after the City receives a proper statement. In no event shall the City be liable for interest, penalties, expenses or attorney's fees. No payment made hereunder shall constitute or be construed as final acceptance or approval of that part of the Services to which such payment relates or relieve the Vendor of any of its obligations hereunder with respect thereto.

6. VENDOR'S ACCOUNTING RECORDS

The Vendor shall keep records pertaining to Services performed (including complete and detailed time records) and reimbursable expenses incurred, employing sound bookkeeping practices and in accordance with generally accepted accounting principles. All records pertaining to Services performed on a time card or unit price basis and reimbursable expenses shall be available to the City or its authorized representatives for review and audit during normal business hours.

7. REPORTS, DRAWINGS, ETC.

All reports, drawings, plans and other data and material, including computer programs and other material in electronic media (collectively, “Materials”) furnished to the City shall become the City’s property and may be used by the City (or such parties as the City may designate) thereafter in such manner and for such purposes as the City (or such parties as the City may designate) may deem advisable, without further employment of or additional compensation to the Vendor. The Vendor shall not release or disclose to any third party any Materials produced for the City without obtaining the City’s prior written consent. At no time shall the Vendor release or disclose to any third party any Materials furnished to the Vendor by the City in connection with the performance of the Vendor’s Services. Upon the expiration or termination of this Agreement for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Vendor (whether completed or in process) shall become property of the City and the Vendor shall immediately deliver or otherwise make available such Materials to the City.

8. INSURANCE

The Vendor shall obtain and maintain the following insurance in amounts not less than the Minimum Insurance Limits set forth on page one of this Agreement during all times that the Vendor is performing Services and for at least one year after termination of this Agreement in the case of Commercial General Liability, Worker’s Compensation and Employer’s Liability insurance, and for at least the applicable period of limitations on actions provided by law in the case of Professional Liability insurance: With the exception of Workers Compensation coverage, the City of Everett shall be named as an additional insured on all policies of insurance.

- Workers Compensation Required Statutory Limits
- General Liability Combined single limit of \$1,000,000. Bodily Injury, Personal Injury, Property Damage, and Contractual Liability coverage.
- Auto Liability coverage for Owned, Non-Owned, and Hired automobiles in an amount of not less than \$1,000,000. Combined Single Bodily Injury and Property Damage.
- Umbrella Liability in an amount of not less than \$1,000,000 per occurrence.
- Professional Liability coverage in an amount of not less than \$1,000,000, annual aggregate applicable to this project. If such coverage is underwritten on a Claims-made

basis, coverage must be maintained for a period of three (3) years from the completion of the contract.

- Commercial General Liability insurance covering claims for injury to persons and damage to property. Such insurance shall include contractual liability and shall cover the use of all equipment and motor vehicles on the Site or transporting persons, equipment, materials or debris to and from the Site. Products and Completed Operations insurance shall be maintained for at least three years after completion of this Agreement.

At the request of the City, a Subcontractor employed by the Vendor shall obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of such Subcontractor or of any person or business entity for whose performance the Subcontractor is legally liable arising out of the performance of the contract for Subcontractor services. The Subcontractor shall furnish a certificate or certificates of such insurance coverage to the City prior to the employment of such Subcontractor by the Vendor. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the City shall require.

9. INDEMNIFICATION

To the maximum extent permitted by law, the Vendor agrees to indemnify, defend with counsel acceptable to the City and save harmless the City from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, of every kind and description which the City may incur or suffer resulting from, in connection with, or arising out of any act, error or omission of, or breach of contractual duties to the City by, the Vendor, its agents, servants, employees or Subcontractors. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Agreement and shall survive the termination of this Agreement.

10. COMPLIANCE WITH LAW

It is the responsibility of the Vendor that the Project be conducted, and that all Services and other work performed by the Vendor hereunder be performed so as to comply with all applicable federal, state and municipal laws, regulations, codes, ordinances and orders, and any permit conditions as to which the Vendor has knowledge, as the same may be in effect as of the time of the performance of such work. In particular, without limitation, the Vendor agrees to comply with (a) all regulations pertaining to approvals for federal and state grants, and with all federal and state environmental laws and regulations, and assist in making any submissions with respect thereto and (b) all applicable requirements of the Massachusetts public construction and procurement laws, which are incorporated by reference herein.

11. TERMINATION OF AGREEMENT

The city may terminate this Agreement as follows:

- a. Without cause, on ten days' prior written notice; or
- b. Immediately, by written notice to the Vendor, if the Vendor violates any of the provisions of this Agreement, or fails to perform or observe any of the terms, covenants or conditions of this Agreement, or abandons in whole or in part its Services, or becomes unable to perform its Services, hereunder. For purposes of this Paragraph 11, it is acknowledged that the Vendor's Services under this Agreement are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

In the event of termination, the Vendor shall promptly deliver to the City all Materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the Services performed under this Agreement to the time of termination, and thereupon the City shall pay to the Vendor any unpaid and undisputed balance owing for Services rendered prior to the date of termination. Any termination of this Agreement shall not affect or impair the right of the City to recover damages occasioned by any default of the Vendor or to set off such damages against amounts otherwise owed to the Vendor.

12. MISCELLANEOUS PROVISIONS

- a. Successors and Assigns. Subject to the provisions of Subparagraph (b) below, the City and the Vendor each binds itself, its partners, successors, assigns, and legal representatives to the other party.
- b. Assignment by Vendor. The Vendor shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due hereunder) under this Agreement without the written consent of the City. Any assignment, subletting, or transfer by the Vendor in violation of this Paragraph 12(b) shall be void and without force or effect.
- c. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Vendor with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the city and the Vendor.
- d. Confidentiality. The Vendor shall not, without the City's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.

- e. Certifications. The Vendor shall, from time to time, make such certifications and statements to the City and to such of the City's architects, designers, vendors and lenders, and such other parties, as the City shall reasonably request, in such form as the City shall reasonably request, provided that the Vendor determines that such certifications are true and correct based upon the Services performed by the Vendor hereunder.
- f. Additional Services. If the City requests the Vendor to perform additional services beyond the scope of Services hereunder, the Vendor shall perform such additional services only upon obtaining written authorization from the City including written agreement as to the method and amount of compensation for such additional services.
- g. Disputes. All claims, disputes and other matters in question between the City and the Vendor arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Middlesex County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Agreement or the earlier termination thereof as provided in Paragraph 11 above, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of this Agreement before resorting to litigation.
- h. Limited Liability. No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the City, nor any participant with the City, shall be personally liable to the Vendor hereunder, for the City's payment obligations or otherwise, the Vendor hereby agreeing to look solely to the assets of the City for the satisfaction of any liability of the City hereunder. In no event shall the City ever be liable to the Vendor for indirect, incidental or consequential damages.
- i. Governing Law. This Agreement shall be governed by the law of the Commonwealth of Massachusetts.
- j. No Waiver. The City's review, approval, acceptance or payment for Services under this Agreement shall not operate as a waiver of any rights under this Agreement and the Vendor shall be and remain liable to the City for all damages incurred by the City as the result of the vendor's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies of the City provided for under this Agreement are in addition to any other rights or remedies provided by law. The City may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.
- k. Interpretation. If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby. Paragraph headings are included herein for reference purposes only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

13. EQUAL EMPLOYMENT OPPORTUNITY

a. In connection with the performance of work under this Agreement, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex or handicap. The Vendor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

b. In connection with the performance of work under this Agreement, the Vendor shall not discriminate in its relationships with Subcontractors or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, sex or handicap.

c. The Vendor shall comply with all applicable laws and regulations pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

14. CERTIFICATIONS BY VENDOR

By execution of this Agreement, the Vendor certifies:

a. The Vendor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

b. No Vendor to or subcontractor for the Vendor has given, offered or agreed to give any gift, contribution or offer of employment to the Vendor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Vendor or subcontractor of a contract by the Vendor.

c. No person, corporation or other entity, other than a bona fide full-time employee of the Vendor, has been retained or hired by the Vendor to solicit for or in any way assist the Vendor in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Vendor.

d. The Vendor shall comply with all applicable requirements of Section 39R of Chapter 30 of the Massachusetts General Laws.

15. TAXES

a. By execution of this Agreement the vendor, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the person(s) who signed this Agreement on the vendor's behalf, filed all state tax returns and paid all state taxes required under law.

b. The city is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Vendor's request, Tax Exemption Certificates

will be furnished by the City to the Vendor with respect to such tax-exempt articles as may be required under this Agreement. The Vendor shall not pay, and the City shall not reimburse or pay the Vendor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

16. CONFLICT OF INTEREST

The Vendor acknowledges that the City is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Vendor agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Vendor based on said statute.

Exhibit B

SCOPE OF SERVICES

Exhibit C

PRICING PROPOSAL