

**CITY OF EVERETT  
MASSACHUSETTS**  
484 Broadway • Everett, MA 02149



**Invitation For Bids  
Contract No. 24-17**

**Supply, Deliver & Maintain Portable Toilets**



**CITY OF EVERETT MASSACHUSETTS  
PROCUREMENT OFFICE**

**INVITATION TO BID**

The City of Everett seeks sealed bids from qualified bidders for the supply, delivery, and service standard and/or ADA compliant portable toilets (hereinafter “Porta-Potties”) for several City-owned locations, **contract 24-17** will be received by the Procurement Office, Everett City Hall, 484 Broadway, Room 14, Everett, MA 02149 until 1:00 pm on **September 5, 2023** and at that time and place the bids will be publicly opened.

Contract Documents may be obtained, at no charge, on or after **August 16, 2023 at 9 a.m.** from the City of Everett’s website. Bidders requesting Contract Documents by mail shall prepare all necessary delivery forms and make all arrangements necessary to have the Contract Documents picked up prepaid.

If, at the time of the scheduled bid opening, the bid opening location shall be shut down as the result of an emergency, the bids will be due and opened at the same time and location on the 1st business day the building is able to re-open. Bids will be accepted until that date and time.

It is the responsibility of prospective proposers and or bidders to check that they have received all addenda.

It is the responsibility of the prospective bidder to keep current the email address of the bidder’s contact person and to monitor that email inbox from the City of Everett, including requests for clarification. If any changes are made to this IFB, an addendum will be issued. Addenda will be emailed to all bidders on record as having picked up the IFB. The City assumes no responsibility if a prospective bidder’s designated email address experiences technical problems, including those with the prospective bidder’s computer, network or internet service provider (ISP) cause email communications sent to/from the prospective bidder to be lost or rejected by any means including email or spam filtering.

This contract will be awarded under M.G.L. c. 30B. Bids shall be awarded to the responsible and eligible bidder offering services at the lowest price. The City of Everett reserves the right to waive any informality in or to reject any and all bids, for any reason the City determines to be in the City's and/or the public's best interest.



## **I. GENERAL INFORMATION AND BID SUBMISSION REQUIREMENTS**

1) Bids and specifications can be obtained and will be accepted at the City of Everett's, Purchasing Office, Room 14, 484 Broadway, Everett, MA 02149. This Invitation for Bids is made in accordance with M.G.L. c30.

The bid envelope must be sealed, with one (1) original set and one (1) copy of the of required documents.

2) Bidders may download the IFB via the City of Everett's webpage and register in order to ensure receipt of any changes or addenda to the IFB.

3) Award will be made within forty-five (45) days after bid opening unless otherwise stated in the specifications or the time for award is extended by mutual consent of all parties. All bids submitted shall be valid for a minimum period of sixty (60) calendar days following the date established for acceptance.

4) If any changes are made to this IFB, an addendum will be issued. Addenda will be emailed to all bidders on record as having requested the IFB. Each responder shall acknowledge receipt of any and all addendum issues by submitting acknowledgment forms provided with any Addenda. Failure to do so may cause to reject the submittal as being unresponsive.

5) Questions concerning this IFB must be submitted in writing to [allison.jenkins@ci.everett.ma.us](mailto:allison.jenkins@ci.everett.ma.us) at least (5) calendar days prior to the bid closing. Written responses will be emailed to all bidders on record as having requested the IFB in the form of an addendum.

6) Bids may be modified, corrected or withdrawn only by written correspondence received by the Purchasing Department prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_\_" and must reference the original IFB.

7) After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the city or fair competition. Minor informalities may be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid, but the intended correct bid is not similarly evident.

8) The city reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in its best interest.

9) The city will not be responsible for any expenses incurred in preparing and submitting bids. All bids shall become the property of the city.

10) Responders must be willing to enter into the city's standard form of contract that will include the included in this IFB.

11) The bid, and any subsequent contract for the services, is hereby issued in accordance with applicable Massachusetts General Laws. The selected bidder shall be expected to comply with all applicable state and federal laws in the performance of service.

12) Bids received prior to the date of opening will be securely kept, unopened. No responsibility will attach to an officer or person for the premature opening of a bid not properly addressed and identified.

13) Any bids received after the advertised date and time for opening will be returned to the bidder unopened.

14) Purchases by the city are exempt from federal, state and municipal sales and/or excise taxes.

15) The Tax Compliance Certification and the Certificate of Non-Collusion must be included with the bid response. The bid must be signed by the authorized individual(s) of the firm bidding.

16) Unexpected closures. If, at the time of the scheduled bid opening, The City of Everett Purchasing Department is closed due to uncontrolled events such as fire, snow, ice, wind or building evacuation, the bid opening will be postponed until 3:00 PM on the next normal business day. Bids will be accepted until that date and time.

17) The City of Everett is an Affirmative Action/Equal Opportunity Employer. The city encourages bids from qualified MBE/DBE/WBE firms.

18) Attention of all bidders is directed to all applicable Sections of the General Laws of the Commonwealth of Massachusetts, and Municipal Ordinances and by-laws, as most recently amended, that govern the award of this contract. They will be deemed to be included in the contract the same as though written out in full.

19) No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the City.

20) Every request for such interpretation shall be in writing (typed, not handwritten) addressed to [allison.jenkins@ci.everett.ma.us](mailto:allison.jenkins@ci.everett.ma.us) . It is the bidder's responsibility to confirm that any request has been received. To be given consideration a request must be received at least seven (7) calendar days prior to the date fixed for the opening of bids.

21) Bidders may arrange to inspect the prospective sites and acquaint themselves with the conditions. Bidders must also thoroughly examine the bid and contract documents, including all addenda and requirements for certificates of insurance, bonds, etc. Failure of any bidder to visit the site and/or acquaint himself with the bid and contract documents shall in no way release that bidder from the obligations with respect to his bid.

22) Bid forms shall be completely filled in and signed by the Contractor. Forms that are incomplete or obscure, or contain work not in accordance with the specifications will be rejected. Each bid must be

submitted on the prescribed forms that are included as pages of this document. All blank spaces for requested prices must be filled in, in ink or typewritten, and must be legible.

23) Each bid must be submitted in a sealed envelope plainly marked on the outside with the name of the bidder, his address, and the name of the project and bid number for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the Invitation to Bid.

24) The City reserves the right to make such investigations as it deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish to the City all such information and data for this purpose as the City may require. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the City that such bidder is responsible and qualified to carry out and to complete the work of the contract.

25) In the event there is a discrepancy in the Form of General Bid between the unit price written in words and that in figures, the unit price written in words shall govern. The City of Everett reserves the right to waive any non-material informalities and errors in the bid.

26) In determining **RESPONSIBILITY**, the City may require the prospective contractor to show proof that he has sufficient equipment, equipment operators and a sufficient number of qualified and experienced employees to properly and efficiently accomplish the proposed work.

27) This contract will be awarded only after funds have been appropriated or otherwise authorized.

28) By submitting his bid, the bidder agrees to execute the contract, provide insurance certificates and bonds, and to commence work within the time limits stated in the Contract Documents. In the event the successful bidder fails or neglects to execute the contract and provide certificates and bonds in the prescribed time, the City, at its sole option, may determine that the bidder has abandoned the contract, that his bid and acceptance are null and void and that his bid security has been forfeited to the City. The City may cancel the award to that bidder and re-award the contract to another.

29) Bidders must be willing to enter into the City Of Everett's standard form of contract found within this IFB.

**NOTE: THE SPECIFIED QUANTITIES ARE ESTIMATES OF REQUIREMENTS FOR USE IN COMPARING BIDS: THE CITY OF EVERETT DOES NOT GUARANTEE THAT THESE QUANTITIES WILL ULTIMATELY BE REQUIRED.**

## **II. BID SUBMISSION REQUIREMENTS**

All bid forms and certifications must be signed by an authorized individual(s).

- 1) Form of General Bid
- 2) Signed Tax Compliance Certification.

- 3) Signed Certificate of Non-Collusion.
- 4) Signed Certificate of Authority.
- 6) Current Certificate(s) of Insurance.

### **III. TERM OF SERVICE**

The successful bidder shall perform services as necessary from the base term September 1, 2023 to August 31, 2024. The city may at its sole discretion award for two (2) additional one (1) year terms. The contract may not exceed three (3) years in length.

### **IV. QUALITY OF WORK**

All work is to be quality work and shall be performed according to the standards of the industry and according to the plans, directions and instructions as presented by the authorized representatives of the City of Everett.

### **V. HOURS OF WORK**

It is intended that the Contractor shall accomplish the majority of work during normal business hours. Standard hours of work shall be Monday-Friday 7:00 am until 3:30 pm.

### **VI. RESPONSE TIMES**

**Non-emergent:** Repair must start within four (4) hours of receipt of a request initiated by the City of Everett Director or his/her designee.

### **VII. PERMITS AND LICENSES**

Unless specifically excluded from the contract documents, the Contractor shall obtain all required permits, licenses, certificates and inspections, both permanent and temporary, and shall make all necessary arrangements with Utility Companies to properly prosecute the work, and shall send all notices to Utilities as are required by the General Laws of Massachusetts. Any permit fees required by the City of Everett related to this Contract may be waived.

The Contractor shall keep itself fully informed of and comply with all existing and future federal, state and municipal laws and regulations and all orders and decrees of any governmental bodies or tribunals (hereinafter also referred to as 'laws') having jurisdiction in any manner which affect this contract or construction, including but not limited to such laws affecting those engaged or employed in the work, the materials used in the work or in any way affecting the conduct of the work. If any clause in this contract does not conform to such law, then such clause shall be void and the law operative shall be inserted in lieu thereof. If any discrepancy or inconsistency is discovered in the specifications, drawings, or contract documents in violation of the law, the Contractor shall forthwith report the same in writing to the Owner. The Contractor shall cause its employees, agents and subcontractors to also observe and comply with all such laws. It shall protect and indemnify the Owner and its officials, board members, employees and duly appointed agents against any claim or liability arising from or based on any violation, whether by the Contractor or its officials, employees or subcontractors, of any such law.

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work which it knows or should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall be responsible for such Work and shall bear the costs attributable to correction along with any other damages incurred by the Owner.

## **VIII. INSPECTION**

The City of Everett reserves the right to inspect any and all work in progress or completed. Any omission or failure on the part of the City of Everett's representative to disapprove or reject inferior or defective work or materials shall not be construed to be an acceptance of such work or material. If any defective work or material is found during inspection, the contractor shall remove or repair, at his/her own expense, such defective work or material rejected and shall rebuild and/or replace same without extra charge.

If the Contract Documents, the Owner's or his/her agent's instructions, or laws, ordinances or regulations of any public authority require any work to be tested or approved, Contractor shall give the Owner or his/her agent timely notice of its readiness for inspection by the proper authorities. If any such work shall be covered up without approval or consent, it must, if required by the Owner or his/her agent or other proper authorities, be uncovered for examination at Contractor's expense.

## **IX. Not applicable**

## **X. REFERENCES**

Bidders must provide a minimum of three (3) customers for whom it provided similar services, in the past three years. Reference information must include Name, Contact Person, Phone Number, and date of work completed. Poor references may be a basis for determining that a bidder is not responsible. Reference questions will include but may not be limited to work quality, customer service, and general customer satisfaction. The City of Everett may contact references not listed by the bidder in their evaluation process.

If you have ever been terminated or otherwise failed to complete any work awarded, please describe circumstances on separate sheet. Include names of customer(s).

## **XI. RULE FOR AWARD**

One contract shall be awarded to the lowest responsive and responsible bidder(s) offering the lowest bid. Each contract awarded will have a not to exceed amount for all three years of the contract combined. There is no promise of any work assignment made by completing this bid.



## **SCOPE OF SERVICE**

The CONTRACTOR shall furnish all labor, equipment, and materials necessary to supply, deliver, and service standard and/or ADA compliant Porta-Potties. Each portable building/structure shall come with a self-contained chemical toilet - with covered seat, hand disinfectant, and paper hand towels and wipes, to be re-supplied at every cleaning. Units shall be delivered and picked up at the locations determined by the DPW at the specified schedule.

The CONTRACTOR shall also be expected to provide porta-potty pump outs as well as cleaning and restocking services to the installed Porta-Potties.

The CONTRACTOR is responsible for proper handling and disposal of all waste.

Any additional services in addition to the regularly contracted scheduled service will only be authorized by the Department of Public Works Director or his/her designee. CONTRACTOR shall provide emergency contact names and numbers to the Department of Public Works Director and/or his/her designee and shall be prepared to respond as quickly as possible to urgent requests for service.

## **SCHEDULED SERVICE – ESTIMATED QUANTITIES**

8 standard units and 3 handicap units, at varying locations within the city, as defined by the DPW.

Install first week in April, removal end of October.

Twice a week cleaning and servicing.

## **UN-SCHEDULED SERVICE**

From time to time, the City may require one or more portable toilets to be placed and serviced at various locations around the City, on short notice. Only the Department of Public Works Director, or his/her designee, may request un-scheduled service, and these instances are generally for short periods of time, usually one week or less, and are required to add capacity for special events or unforeseen maintenance circumstances. The CONTRACTOR shall be capable of providing such service.

The quantities shown are estimates only and may vary from a minimum of zero upwards, depending on actual needs at the time. CONTRACTOR shall invoice for actual number units and days used.

CONTRACTOR shall invoice the City in a timely manner monthly. All invoices for this work shall be sent to: City of Everett, Department of Public Works, via e-mail to: Brian McCarthy, Business Manager. Invoices should include the City issued contract number. Each invoice must clearly show the location of the service, the time period covered (if applicable) by the invoice, and the type of porta-potty (or other equipment).

Monthly Services logs for each Location are required to be submitted with each invoice.

CONTRACTOR shall complete, retain, and submit monthly the Monthly Service Log – EXHIBIT E for each location, included in this IFB.

Logs should be available for each location that are being serviced and filled out in accordance with their service schedule. Invoices submitted without their Monthly Service Logs will not be processed until the Contractor presents the prerequisite Monthly Service Log to the Everett Department of Public Works.

The scheduled service listed below should be invoiced on a monthly basis. All other un-scheduled work must be pre-authorized by the Department of Public Works Director or his/her designee and should be invoiced immediately following the completion of the pre-approved requested service.

**QUALITY OF WORK** All work is to be quality work and shall be performed according to the standards of the industry and according to the plans, directions and instructions as presented by the authorized representatives of the City of Everett.

Bidder must have been regularly and actively engaged in the Portable Restroom business, operating under the same business name and business organization structure; and performing the type of work described above under “SCOPE OF WORK” for a minimum of five (5) years and must provide proof of this.

Bidder must provide current proof of Insurance(s) for the business.

**FORM OF GENERAL BID  
CONTRACT NO. 24-17**

To - The City of Everett, acting by the mayor, as Awarding Authority.

- A. The undersigned proposes to furnish all labor, materials and equipment to do all necessary work under this contract for the City of Everett, Massachusetts acting by its mayor and in accordance with the accompanying specifications provided by the **Department of Public Works**, Everett, Massachusetts for the sum(s) specified below, subject to additions and deductions according to the contract document and in all respects according to the terms thereof.
- B. The undersigned agrees that it will commence within seven (7) days after executed contract is delivered to the Contractor.

**This Bid Includes Addenda Through No. \_\_\_\_\_:**

Name of Company: \_\_\_\_\_

*The quantities below are estimates to compare bids. The City of Everett may add or remove units and or days depending on the needs of the City.*

**SCHEDULED SERVICES:** (8 locations within the City)

|                        |          |              |   |              |            |
|------------------------|----------|--------------|---|--------------|------------|
| 1. Daily Rental Fee    | \$ _____ | x 8 Standard | x | 214 days     | = \$ _____ |
| 2. Daily Rental Fee    | \$ _____ | x 3 ADA      | x | 214 days     | = \$ _____ |
| 3. Clean/stocking Fee: | \$ _____ | x 11 units   | x | 31 cleanings | = \$ _____ |

**UNPLANNED SERVICES:** (varying locations within the City)

|                        |          |              |   |             |            |
|------------------------|----------|--------------|---|-------------|------------|
| 4. Daily Rental Fee    | \$ _____ | x 1 Standard | x | 18 days     | = \$ _____ |
| 5. Daily Rental Fee    | \$ _____ | x 1 ADA      | x | 18 days     | = \$ _____ |
| 6. Clean/stocking Fee: | \$ _____ | x 1 units    | x | 3 cleanings | = \$ _____ |

**Total of all services:** = \$ \_\_\_\_\_

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Bid price written in words

**Insurance Required:**

- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
- (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.

(c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth of Massachusetts under the provisions of Section Twenty-Nine F of Chapter Twenty-Nine, Section 25C (10) of Chapter 152 (workers' compensation) or any other applicable debarment provisions of any other Chapter of the General Laws or any rule or regulations promulgated thereunder.

Name of Firm: \_\_\_\_\_

By: \_\_\_\_\_  
(Signed Name) (Title) (Date)

\_\_\_\_\_  
(Printed Name) (Title)

Business Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Tel. No: \_\_\_\_\_; Fed. ID No.: \_\_\_\_\_

Email: \_\_\_\_\_

CITY OF EVERETT  
**CONTRACT No. 24-17**  
SUPPLY, DELIVER & MAINTAIN PORTABLE TOILETS  
AND RELATED WORK

**CONTRACT FOR SERVICES**

**CITY:** CITY OF EVERETT

**VENDOR:**

**PROJECT:** Delivery / Servicing of Porta a Potties

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:** September 1, 2023 – August 31, 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

**CITY OF EVERETT:**

\_\_\_\_\_  
Brian McCarthy  
Business Manager

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Allison Jenkins  
Chief Procurement Officer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Eric Demas  
Chief Financial Officer/City Auditor  
Account Number: \_\_\_\_\_

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
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.

**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**



**EXHIBIT B**  
**CERTIFICATE OF NON-COLLUSION**

CITY OF EVERETT, Contract No. 24-17

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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.

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(Signature of Authorized Individual)

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(Printed Name of person signing)

---

(Name of business)

---

(Date)

**EXHIBIT C  
CERTIFICATE OF TAX PAYMENT**

**Contract No. 24-17**

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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, as well as paid all contributions and payments in lieu of contributions pursuant to MGL 151A, §19A(b).

---

(Signature of Authorized Individual)

---

(Printed Name of person signing)

---

(Name of business)

---

(Date)

---

Social Security Number or  
Federal Identification Number

**EXHIBIT D**

**CERTIFICATE OF CORPORATE AUTHORITY**

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_  
(Name of Corporation)

held on \_\_\_\_\_ it was VOTED that:  
(Date)

\_\_\_\_\_  
(Name) (Title)  
of this corporation, be and he/she hereby is authorized to submit bids and proposals, execute contracts, deeds and bonds in the name and on behalf of said corporation, and affix its corporate seal thereto; and such execution of any contract, deed or obligation in this corporation's name on its behalf by such \_\_\_\_\_ under seal of the company, shall be valid and binding upon this corporation.

A True Copy,  
ATTEST: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PLACE OF BUSINESS: \_\_\_\_\_  
\_\_\_\_\_

DATE OF THIS CERTIFICATE: \_\_\_\_\_

I hereby certify that I am the clerk of the \_\_\_\_\_  
(Corporation)  
that \_\_\_\_\_ is the duly elected \_\_\_\_\_ of  
(Name) (Title)

said corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this Certification.

\_\_\_\_\_  
(Clerk)

CORPORATE SEAL:

\_\_\_\_\_, Massachusetts  
CERTIFICATE OF INCUMBENCY AND AUTHORITY

\_\_\_\_\_, LLC  
I, \_\_\_\_\_, do hereby certify that:

1. I am the duly elected and acting \_\_\_\_\_ of \_\_\_\_\_ LLC, a limited liability company organized and existing in good standing under the laws of the State of \_\_\_\_\_ (the "Company").
2. Attached hereto as Exhibit A is a true and correct copy of resolutions which were duly adopted by the members of the Company on \_\_\_\_\_, 20\_\_.
3. The attached resolutions have not been amended, rescinded or modified and are in full forces and effect on the date hereof in the form originally adopted, and are in conformity with the Articles of Organization and Operating Agreement of the Company.
4. Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization dated \_\_\_\_\_, 20\_\_ and the Operating Agreement dated \_\_\_\_\_, 20\_\_.
5. The attached Articles of Organization and Operating Agreement have not been amended, rescinded, or modified and are in full forces and effect on the date hereof.
6. The following person are the Authorized Officers of the Company in the capacities indicated, and the signatures set forth after their names and titles are their true and genuine signatures.

| Name  | Office | Signature |
|-------|--------|-----------|
| _____ | _____  | _____     |

Witness, my signature and the seal of the Company this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**  
**MONTHLY SERVICE LOG**

Location: \_\_\_\_\_

Month & Year: \_\_\_\_\_

| No. | Date | Initial | Notes/Issues |
|-----|------|---------|--------------|
| 1   | /    |         |              |
| 2   | /    |         |              |
| 3   | /    |         |              |
| 4   | /    |         |              |
| 5   | /    |         |              |
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| 29  | /    |         |              |
| 30  | /    |         |              |
| 31  | /    |         |              |

## **BIDDER'S CHECKLIST**

Required for bid submittals:

1. Bid response form
2. Non-collusion form
3. Tax compliance certificate
4. Certificate of Authority
5. Reference list
6. Proof of Insurance
7. Bid Deposit