

# REQUEST FOR PROPOSALS

## **ISLAND END RIVER FLOOD RESILIENCE PROJECT**

### **PRE-CONSTRUCTION SERVICES**

Everett, Massachusetts

August 28, 2023



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

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## 1.0 INTRODUCTION

### The Project

The Island End River Flood Resilience Project (IERFRP) is a collaborative effort between the Cities of Everett and Chelsea (“the Cities”) to prevent projected coastal storm surge flooding from the Island End River (“IER”) across a 500-acre floodplain that impacts more than 5,000 residents, 800+ buildings and 11,000 jobs in southeast Everett and southwest Chelsea. The Cities are working to construct a coastal storm surge barrier, storm surge control facility, nature-based solutions along the riverfront, and related amenities at the Island End River (“IER”). The approximately 9.5-acre Project Site is currently composed of a mix of commercial and industrial uses and supporting roadway and utility infrastructures. The existing banks of the river are highly degraded by legacy industrial uses and are comprised of hardened slope stabilization measures and littered with debris. This Project will construct approximately 4,640 linear foot (“lf”) of storm surge barrier, approximately 2,900 square foot (“sf”) of underground storm surge control facility, approximately 50,000 square feet of nature-based solutions along the riverfront, and associated wetland and public access improvements along the IER.

### Project Description

The Project includes four flood resilience elements, including the publicly accessible Resilience Provisions East, the efficient Resilience Provisions West within the Mystic River Designated Port Area (DPA), the essential Storm Surge Control Facility protecting existing storm drainage infrastructure, and an investment in improving coastal wetland resource areas. The entire Project will include approximately 4,640 lf of protective flood barrier system, an approximately 2,900 sf underground surge control structure, approximately 50,000 square feet of nature-based solutions along the riverfront, approximately 22,818 sf of wetland enhancements, and public amenities. Each of these elements is detailed below.

**Resilience Provisions East** – Storm surge barrier along the Chelsea banks of the IER, which provides public amenities and the Resilient Riverwalk, which includes improved pedestrian waterfront access in the form of an elevated boardwalk and vegetated berm sections. The Island End Park will also be rehabilitated as part of the Project.

**Storm Surge Control Facility** – This structure will be constructed at the outlet of the existing Market Street culvert to prevent inland flood damage during coastal storm events. The control gates will normally be open to allow for tidal flow into culverted and daylighted sections of the IER. Additionally, control measures will be installed on the Beacham Street drainage system to prevent backflow into the existing stormwater drainage system.

**Resilience Provisions West** – Storm surge barrier along the Everett banks of the IER, which is situated in a Designated Port Area (“DPA”), in the form of vertical freestanding concrete wall and flood gates to protect working port businesses from coastal inundation.

**Nature-based Solutions & Wetlands Enhancements** – Existing degraded riverfront slopes will be reimagined using a combination of native vegetation along upper bank and planted with bagged salt marsh grasses downslope.

The Project will also improve the health of the remaining salt marsh portion of the IER by removing invasive Phragmites (*Phragmites australis*), replanting with and maintaining native species, and removing significant deposits of existing trash and debris in this resource area. Additionally, it will address issues of erosion and sparse vegetation on coastal bank resource areas around the IER through robust native planting program and slope stabilization efforts.

The Project has filed an Expanded Environmental Notification Form (EENF) and additional information and project plans included in that filing can be accessed here:

<https://eeaonline.eea.state.ma.us/EEA/MEPA-eMonitor/submittal/83F3C575-62B5-4906-BF84-CD807AAF09B7>

### **Project Setting Parameters**

The Project’s “work area” is comprised of 15 different parcels each with unique ownership and uses. The continued and minimally disrupted operation of these facilities is a major goal of the project proponents. The barrier wall itself extends through these sites as well as public and private ways. The Everett portion of the work area is also a Designated Port Area (DPA) with active waterfront businesses and other industrial activities. In addition, there is a stakeholder who normally operates at United States Coast Guard (USCG) Maritime Security (MARSEC) Level 2. Within the district there are thirty - 21E Sites (Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws c. 21E, §§ 1-22.) and of these, more than a half dozen sites have activity and use limitations (AUL) deed restrictions. There is also a Confined Disposal Facility (“CDF”) that was built along the Island End River in the mid-2000’s as a Release Abatement Measure (RAM) for one of the largest 21E sites.

The work area exists in two cities who are in 2 separate counties.

Because of the size, complexity and scope of this project there are multiple consultants who are collaboratively working together to design, permit and construct this project. A successful applicant will show a history of collaborative efforts in previous projects.

### **Construction Types**

**Barrier Wall:** The anticipated design is a deep pile (el. -50) supported strip footings at elevation -15’ with sheet pile embedment to grade. Reveal extends 3’-7’ in height with 18” wide reinforced concrete cap extending for 3250 feet of the alignment interspersed with more than a half dozen -30’-wide flood gates designed to be closed manually and seal the barrier from bilateral water intrusion.

**Storm Surge Control Facility (SSCF):** The anticipated design is an underground 40’ x 70’ cast-in-place concrete structure with inputs from the 16’ by 12’ diameter Market Street Culvert and 8’-6” by 6’-1” diameter Beacham Street Culvert and will allow bi-directional flow during normal operations by use of combination flap gate valves normally in open position.

In addition to the valves, the SSCF is proposed to contain an inland bar rack and rock traps on both sides of the gates to facilitate maintenance, roll-up gates for isolation of the inland and riverside culverts, gate actuators and stop logs. Storm flow is expected to be re-routed during construction phases.

**Nature-based Solutions:** Dense historic development patterns surrounding the IER and a lack of investment in the health of plantings along the riverfront have left limited vegetation in the riverfront area and banks dominated by invasive Phragmites and Ailanthus with patches of native ruderal and urban stress tolerant species. The steep bank areas are subject to erosion and the intertidal area of IER has been channelized and armored, limiting the opportunity for shellfish or vegetation.

The Nature-based Solutions portion of the Project will address issues of erosion and sparse low habitat value vegetation on the coastal bank and riverfront through native plantings implemented successionaly through an adaptive management program.

## **FUNDING**

The total budget for these pre-construction services is One Hundred and Sixty-Seven Thousand Dollars (\$167,000), which is funded through a combination of state and federal grant awards. Proposals should set forth a plan for how the scope of services (the “Scope of Services”) will be satisfied within this budget. The fee proposal (the “Fee Proposal”) shall include the name, role, function/discipline/title, a breakdown of job hours and rates for each task. The Fee Proposal will be reviewed under separate cover from the Technical Proposal.

## **TIMELINE**

The Pre-Construction Services Scope of Work must be complete in full by June 30, 2024, in accordance with state and federal grant requirements.

## **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 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 **September 18, 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 one contract 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 consultant 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

A successful applicant would demonstrate expertise and collaborative work on complex infrastructure projects, including preparation of studies, constructability reviews, conceptual estimating, value engineering, and life-cycle cost analysis. Additionally, we are looking for an innovative approach to construction methodology, phasing and construction execution to minimize both costs and impacts to stakeholders in a busy industrial area with high vehicular traffic.

### Scope of Work

- ***Meetings with Project Team (3-4 Meetings)***

The pre-construction team will meet with the project team to discuss the overall project, design and permitting implications, and general project updates to inform their services ahead of the bidding and construction phases of the project. Kickoff meeting to commence within two weeks of pre-construction services procurement. Additional meetings will occur following initial plan reviews and schedule preparation.

*Deliverables – Meeting notes, sign-in sheets*

- ***Constructability Review***

The pre-construction team will thoroughly review the design plans, details, and specifications to provide feedback on the constructability of the project elements. This review will be conducted over the currently prepared project Preliminary Design (limited plan drawings and section views, no specifications) starting upon Notice to Proceed and concluding within 2-months by early November 2023, then be renewed with the full 60% Design package (plans, details, specification) starting in January 2023 and concluding within 2-months thereafter.

*Deliverables – QA/QC reviews/comments on both design sets delivered in memorandum and/or annotated plan set format.*

- ***Cost Estimating Services***

The pre-construction team will also provide preliminary cost estimating services for the project's scope of work and materials for construction planning and funding purposes. The review will be conducted over the 60% Design package starting on 1/1/2024 and concluding within 2-months thereafter, and then renewed over the 90% Design package starting 5/1/2024 and concluding within 1-month thereafter. Each estimate should include a Memorandum describing assumptions and highlighting noteworthy opportunities for additional cost efficiency through future design refinements and/or construction approaches.

*Deliverables – Draft cost estimate for each design set*

- ***Scheduling and Logistics Planning***

The team will also draft initial phasing and logistics plans for the project scope in coordination with the permitting team and landowners. The pre-construction team will develop a more robust construction schedule for the entirety of the project. Guidance will be provided to support interactions with landowners related to construction impacts.

As such, work breakdown schedule by functional task should additionally be broken down by property subject to that work. Logistics plans should inform understanding of construction work zone, operations staging, and site motility needs. Logistics plans should be prepared, at a minimum, for each semiannual construction period, and be accompanied by a memorandum discussing perception of roadway and private property impacts. The review will be conducted over the 60% Design package starting on 1/1/2024 and concluding within 3-months thereafter.

*Deliverables – Draft phasing, logistics plans, and construction schedule*

## **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.

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 “**24-19 Technical/Non-Price Proposal**” containing the following:

- Cover letter and approach to the Project:
  - Introduction to the Respondent
  - State of the Respondent’s approach to pre-construction services, including understanding of the requirements of the RFP and the scope of services needed.
- Resumes and project experience of each team member
- Plan of Services to address scope of work for pre-construction services that demonstrates Respondent’s expertise and capacity to perform these pre-construction services
- 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.
- The City reserves the right to contact references beyond those provided by the consultant.
- This project will be awarded under M.G.L. 30B.
- The City reserves the right to award or reject all proposals if deemed in the best interest of the City.

**Price Proposal – Envelope 2 sealed and clearly marked**

The design firm(s) or team(s) shall submit a sealed envelope clearly marked “**24-19 Price Proposal**” containing the following:

- Submit a total cost for completing this project.

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

**6.0 REQUIRED CERTIFICATIONS**

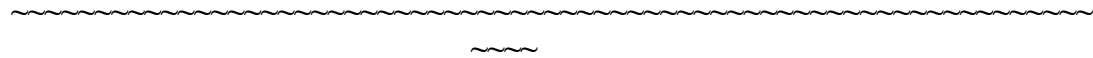
- Certificate of Non-collusion
- Certificate of Tax Compliance

**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.

	<b>Highly Advantageous</b>	<b>Advantageous</b>	<b>Not Advantageous</b>
<p><b>I. Plan of Services</b> 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><b>II. General PROPOSALS of Firm</b> 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><b>III. Personnel &amp; Resources to be Utilized</b> 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><b>IV. Experience with similar projects.</b> 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><b>V. Fee</b> 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. 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.

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**