



CITY OF EVERETT

24-24 HEAVY DUTY FREIGHTLINER TRUCK REPAIR SERVICES
INVITATION FOR BID (IFB)

September 11, 2023



NOTICE TO CONTRACTORS 24-24 Heavy Duty Truck Repair Services

Pursuant to MGL c. 30B, the Chief Procurement Officer for the City of Everett is soliciting sealed bids from qualified contractors to provide repair services for Heavy Duty Freightliner Truck Repair Services for city vehicles. Vendor must be a factory authorized repair center for Freightliner.

All inquiries concerning this IFB must be submitted in writing and addressed to:

City of Everett
Purchasing Department
484 Broadway
Everett, MA 02149

Or Allison.jenkins@ci.everett.ma.us

All bid documents will be posted to the City Of Everett's webpage Purchasing - Everett, MA - Official Website [Purchasing - Everett, MA - Official Website \(cityofeverett.com\)](http://cityofeverett.com)

All bids must be returned to:

City Of Everett
Purchasing Department, Room 14,
484 Broadway
Everett, MA 02149

On or before **1 pm on October 2, 2023**, at which time they will be publicly opened and read aloud.

This bid and contract are solicited under MGL c. 30B.

The City reserves the right to reject any or all bids and waive informalities if deemed to be in the best interest of the City Of Everett.

I. GENERAL CONDITIONS

1. Attention of all bidders is directed to Chapter 30B of the General Laws of the Commonwealth of Massachusetts and to all other applicable sections of the General Laws as most recently amended which govern the award of this contract.

2. Bid forms shall be submitted to the Purchasing Department, Room 14, 484 Broadway, Everett, MA 02149, on or before 1 pm on October 2, 2023. Each bid shall be in a sealed envelope, clearly marked on the outside of the envelope "**24-24 Heavy Duty Truck Repair Services**" and the name and address of the bidder.
3. The bidder shall sign the response 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 response will sign the document.
4. Bid forms shall be completely filled in. Bids which are incomplete, conditional or obscure will be rejected.
5. No award will be made to any bidder who cannot satisfy the awarding authority that he/she has sufficient ability and sufficient capital to enable him/her to meet the requirements of these specifications.
6. Bidders may correct, modify or withdraw the original responses before the bids are due. 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 response will not be accepted. A bidder who wishes to withdraw a response must make a request in writing before the date and time of acceptance.
7. Any bid received after the date and time stated in the bid document will be deemed non-responsive and shall not be opened.
8. Bids will be publicly opened and read at the date and time stated in the bid. All interested parties are invited to be present.
9. No award will be made to any bidder who cannot satisfy the City that they have sufficient ability and experience in this class of work and sufficient capital to enable him to execute and complete the work successfully.
10. At the time of the opening of bids, each bidder shall be presumed to have read and be thoroughly familiar with these documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no relieve any bidder from any obligation in respect to his/her bid.
11. Each bidder shall acknowledge receipt of any and all addendum issued to the IFB by indicating on the bid form. Failure to do so shall be cause to reject the bid as being non-responsive.
12. It is understood that the firm/individual's bid will remain valid for 90 days past the submission deadline.
13. The contract will be awarded, subject to the availability of funds, to the lowest responsive, responsible bidder.
14. The City may cancel this IFB, in whole or in part, or may reject all bids submitted in response to this IFB if it is determined to be in the best interest of the City.

15. The Bidder's attention is directed to all applicable Federal laws, state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over bid/purchase shall apply to the contract throughout, and they shall be deemed to be included in the contract the same as though herein written out in full.
16. The successful bidder must be licensed or incorporated to do business in the state of Massachusetts.
17. If services are deemed to be unsatisfactory to the City and are in violation of the General and/or detailed specifications, the City shall notify the said bidder. If mutually agreeable arrangement cannot be achieved between the City and the bidder, the terms of the contract will be terminated.
18. Non-Appropriation of Funds Clause: Funding for the resulting contract from this IFB is subject to yearly appropriation. If the City does not appropriate funds for the stated purpose of this project, the contract will be terminated at no additional cost to the City.

II. TERMS AND CONDITIONS

1. **TERM OF CONTRACT:** The performance period for this contract is October 1, 2023 through September 30, 2024, with the option to renew for up to two additional years, in one-year increments, at the sole discretion of the City of Everett.
2. **ASSIGNMENTS AND SUBCONTRACTING:** The selected vendor shall not assign, sell, subcontract or otherwise transfer any interest in this contract without the prior written consent of the City. The successful bidder shall be fully responsible to the City for the acts and omissions of his subcontractor, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
3. **PAYMENT:** The City shall make every effort to furnish payment within thirty (30) days of receipt of a reasonably detailed invoice. Any invoice received must reference the contract number. Nothing contained in the contract shall create any contractual relation between any subcontractor and the City of Everett. The Successful Bidder shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the application provisions of the Contract for the improvements embraced in the site preparation.

Invoicing for all work must be done weekly and must be accompanied by copies of original bills for material used. Billing must separate labor costs in hourly increments and itemize materials.

d. INSURANCE REQUIREMENTS:

The vendor shall obtain and maintain the following insurance in amounts not less than the Minimum Insurance Limits set forth in this IFB, 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.

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.

All costs associated insurance will be included within the bid offered. No payments for insurance costs will be borne by the City of Everett.

e. CHANGE ORDERS AND ADJUSTMENTS: Any request for a change order or adjustment must be submitted in writing and contain, an explanation of the need for the change order, a statement of work including a cost breakdown of each addition, and a statement that the change order is in the best interest of the awarding authority.

f. INDEMNIFICATION: Unless otherwise provided by law, the Vendor will indemnify and hold harmless the City against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees.

g. FEDERAL AND STATE LAW: The selected contractor shall comply with all applicable Federal, State and Local laws and ordinances as if they have been incorporated in full.

h. STATEMENT OF WORK: Except as otherwise specifically stated in the bid and contract documents the selected contractor shall secure, at its own expense, all necessary permits and licenses and comply with all city and state codes and regulations. The selected contractor shall provide and pay for all materials, equipment, labor and tools.

III. BID SPECIFICATIONS

SCOPE OF SERVICES

The Contractor shall provide all management, supervision, parts and labor necessary to provide Auto Repair Services as needed for City of Everett Commercial Vehicles.

The anticipated services shall include Heavy Duty Truck Repairs

The City Department will notify the contractor that there is a vehicle needing repairs and the contractor will respond within 24 hours.

- All City and School Departments may use this contract as needed for auto repairs. The vendor shall perform services for all City Departments according to the specifications in this bid document and invoice the department directly.

Equipment for Auto repair

- The heavy-duty truck repair shop shall have modern equipment and current technical reference materials to show the shop is up to the date with technology. The shop will need a three-dimensional measuring system to measure the height, width and length of the vehicles structure.

All parts must be new and purchased from the original equipment manufacturer or authorized dealer.

- a. Cleanliness for Auto Repair - The auto repair shall be clean, neat and well-lit. Cleanliness is essential.
- b. Professionalism & Training for Auto Repair - The contractors heavy duty truck-repair shop shall offer a written warranty on their workmanship . The heavy-duty truck-repair shop must be staffed with properly trained employees.
- c. Report for Heavy Duty Truck Repair - The Heavy-Duty Truck repair shop shall inspect the vehicle and provide an estimate before starting the repairs. The estimate must explain in detail, how it will be repaired. The City will review the estimate and provide written authorization to proceed.
- d. Payments for Heavy Duty Truck repair - Invoicing is accurate and conforms with bid requirements and is sent directly to the Everett DPW Fleet Department, 19 Norman Street, Everett, MA 02149. All invoice rates shall comply with the price proposal submitted with this bid.

The actual invoice shall include line item detailed with information including the cost of the parts and the number of hours required for labor.

e. Delivery

No mileage charges, fuel surcharges shall be allowed for any and all repair work. There shall be no pick-up, delivery or transport charges for repair work.

Pricing for Parts/Materials

Parts and Materials may only contain the markup % as offered within this bid. The City may purchase parts that as part of this contract at the mark up indicated for repairs done by City staff at the City owned facility.

All parts must carry a standard manufacturer's warranty.

EACH BID MUST BE ADDRESSED TO:

City of Everett
Attn: Purchasing Department - Room 14
Bid 24-23
484 Broadway
Everett, MA 02149

EACH BID MUST CONTAIN:

- Contractor's Price Proposal (Form of General Bid)
- Certificates As To Corporate Bidder (if applicable),
- Non-Collusion Certification
- Tax Compliance Certification
- Qualification and Reference Statement

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. Bidders are required to submit a completed qualification statement, for work performed during the last five-year period, on the attached Qualification and Reference Statement.

If the contract is awarded, it will be awarded to the lowest responsible and eligible bidder. In determining RESPONSIBILITY AND QUALIFICATIONS, the prospective contractor must submit the names of THREE OR MORE references for whom the contractor shall have performed the type of work, described in the scope of Services, within the last five-year period. In this regard, the submittal with his bid of the completed and signed Qualification and Reference Statement is mandatory.

The LOWEST GRAND TOTAL PRICE shall be determined by comparing the sum of the TOTAL DOLLARS AND CENTS price. The TOTAL DOLLARS AND CENTS price shall be determined by multiplying the estimated quantities by its UNIT BID PRICE.

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.

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.

In determining RESPONSIBILITY, the City will 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. The City may do a thorough investigation into references beyond references given.

By submitting his bid, the bidder agrees to execute the contract, provide insurance certificates 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 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. The City may cancel the award to that bidder and re-award the contract to another.

FORM OF GENERAL BID
24-24 Heavy Duty Truck Repair Services

To - The City Of Everett, acting by its 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 specified below, subject to additions and deductions according to the contract document and in all respects according to the terms thereof.

B. The undersigned declares that no person in the employ of said City has any pecuniary interest in this proposal or in the contract for the work he proposes to do and that he understands and agrees that the City, its agents and employees, are not to be in any manner held responsible for the accuracy of, or bound by, any estimates or plans relating to the work and that if any have been given or made they are to be considered solely as a base for filling out and comparing the several proposals.

C. The undersigned agrees that he will within seven (7) days, Sundays and holidays excluded, after receipt of a notice of award by the Department of Public Works, execute the contract and furnish the required insurance certificates and vendor form, as required by the contract documents, the premiums for which are to be paid by the contractor and are included in the contract price.

D. 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.

This Bid Includes Addenda Through No.: _____

Name of Firm Bidding: _____

Business Address: _____

City, State, Zip Code: _____

Fed. ID No.: _____

Tel. No.: _____; Fax No.: _____

EMAIL Address: _____

Instructions for filing out Bid Form

The number of hours (600) and the \$60,000 listed in materials for parts are estimates used to compare bids.

HOURLY RATES:

Job Title	Estimated Hours	Hourly Rate	Total
<i>Example</i>	<i>150</i>	<i>\$ 100</i>	<i>\$ 15,000</i>
Mechanic	450	\$	\$
Oil Tech	150	\$	\$
Total			\$

CERTIFICATE OF AUTHORITY

Please complete if you are a corporate bidder only

I _____, certify that I am the
_____ of the Corporation named as bidder in the within Bid Form: that
_____ who signed said Bid Form on behalf of the Bidder was
then _____ of said Corporation, that I know his signature and that his
signature thereto is genuine and that said Bid Form was duly signed, sealed and executed for and in behalf of said
Corporation by authority of its governing body. (Corporate Seal)

Signature: _____

Title: _____

MINIMUM REQUIREMENTS
Quality Requirements for Heavy Duty Truck Repair

The following Quality Requirements are for all bidders submitting a bid for Heavy Duty Truck Repair Services (1-6). If bidding on Heavy Duty Truck Repair Services, please circle Yes or No for each of the following Quality Requirements. A "NO" response or failure to respond to any of the following will result in rejection of your bid.

The City of Everett will reject any bid that does not meet the quality requirements.

1. The bidder has been providing Heavy Duty Truck Repair Services similar to those described in this IFB to commercial businesses for a minimum of twelve months. Yes No

3. Bidder is a Certified ASE Repair Center. Bidder needs to be FACTORY AUTHORIZED REPAIR CENTER for FREIGHTLINER Vehicles and be able to cover ALL warranty work at no charge
 Yes No

3. Bidder has a secure facility to ensure proper security is provided for all City vehicles.
 Yes No

4. The bidder's Heavy Duty Truck Repair facility is located in Everett or within 15 miles of Everett City Hall.
 Yes No

**CITY OF EVERETT
QUALIFICATIONS AND REFERENCES FORM**

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? _____ NO _____ YES, IF YES DATE AND STATE OF INCORPORATION: _____
4. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?
_____ YES _____ NO - IF YES, WHERE AND WHY?

7. HAVE YOU EVER DEFAULTED ON A CONTRACT? _____ YES _____ NO
IF YES, PROVIDE DETAILS.

8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT, if applicable:

9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #:(_____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #:(_____)
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #:(_____)
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #:(_____)
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____
SIGNATURE: _____
PRINTED NAME: _____ TITLE: _____

**CITY OF EVERETT
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.

(Signature of Authorized Individual)

(Printed Name of person signing)

(Name of business)

(Date)

**CITY OF EVERETT
CERTIFICATE OF TAX PAYMENT**

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

CONTRACT FOR SERVICES

CITY: CITY OF EVERETT

VENDOR:

PROJECT:

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: October 1, 2023 – September 30, 2024 – With two (2) one (1) year optional renewals 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:

Date Signed

CITY OF EVERETT:

Brian A 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. 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