

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



**Invitation For Bids
Contract No. 24-21**

Supply and Install Citywide Holiday Lights

October 4, 2021

**CITY OF EVERETT MASSACHUSETTS
PROCUREMENT OFFICE**

INVITATION TO BID

Sealed Bids for the City of Everett, Massachusetts, to supply and install Holiday Lights, **contract 24-21** will be received by the Procurement Office, Everett City Hall, 484 Broadway, Room 14, Everett, MA 02149 until 1:00 pm on **October 26, 2023** and at that time and place the bids will be publicly opened.

The work under this contract consists of the supply and installation of Holiday Lights within the City of Everett, as well as any incidental work necessary to complete the work under this Contract, as required by the City.

Contract Documents may be obtained, at no charge, on or after **October 11, 2023 at 9 a.m.** from the City of Everett's website [Home - Everett, MA - Official Website \(cityofeverett.com\)](http://cityofeverett.com).

Each Bid shall be submitted in accordance with the Instructions to Bidders and shall be accompanied by a bid security in the amount of five percent (5%) of the amount Bid. The successful Bidder must furnish a Labor and Materials Payment Bond satisfactory in form to the City, each in the amount of 50% of the Contract Amount from a surety authorized to do business in the Commonwealth of Massachusetts and acceptable to the City.

Wage rates for this project are subject to the minimum wage rates as per M.G.L., Chapter 149, Sections 26 to 27H inclusive, as amended. The bidding and award of this Contract will be under the provisions of M.G.L., Chapter 30, Section 39M, as amended.

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

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

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

Bids shall be awarded to the responsible and eligible bidder offering services at the lowest price for all items. The City of Everett reserves the right to waive any informality in or to reject any and all bids, for any reason the City determines to be in the City's and/or the public's best interest.

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I. GENERAL INFORMATION AND BID SUBMISSION REQUIREMENTS

- 1) Bids and specifications can be obtained and will be accepted at the City of Everett's, Purchasing Office, Room 14, 484 Broadway, Everett, MA 02149. This Invitation for Bids is made in accordance with M.G.L. c30 §39M.
- 2) The bid envelope must be sealed, with one (1) original set and one (1) copy of the of required documents.
- 3) Award will be made within forty-five (45) days after bid opening unless otherwise stated in the specifications or the time for award is extended by mutual consent of all parties. All bids submitted shall be valid for a minimum period of sixty (60) calendar days following the date established for acceptance.
- 4) If any changes are made to this IFB, an addendum will be issued. Addenda will be posted to the City of Everett's webpage [Home - Everett, MA - Official Website \(cityofeverett.com\)](http://cityofeverett.com). Each bidder shall acknowledge receipt of any and all addendum issues by submitting acknowledgment forms provided with any Addenda. Failure to do so may cause to reject the submittal as being unresponsive.
- 5) Questions concerning this IFB must be submitted in writing to allison.jenkins@ci.everett.ma.us at least (5) calendar days prior to the bid closing. Written responses will be emailed to all bidders on record as having requested the IFB in the form of an addendum.
- 6) Bids may be modified, corrected or withdrawn only by written correspondence received by the Purchasing Department prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. ____" and must reference the original IFB.
- 7) After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the city or fair competition. Minor informalities may be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid, but the intended correct bid is not similarly evident.
- 8) The city reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in its best interest.
- 9) The city will not be responsible for any expenses incurred in preparing and submitting bids. All bids shall become the property of the city.
- 10) Responders must be willing to enter into the city's standard form of contract that will include the included in this IFB.
- 11) The bid, and any subsequent contract for the services, is hereby issued in accordance with applicable Massachusetts General Laws. The selected bidder shall be expected to comply with all applicable state and federal laws in the performance of service.

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

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

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

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

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

17) The initial term of the contract will be From November 1, 2023 through October 31, 2024. The City at its sole discretion can renew for two (2) additional one (1) year terms.

PREVAILING WAGE & OSHA

18) Pursuant to Massachusetts General Laws, chapter 149, sections 26 and 27, the Division of Occupational Safety (formerly the Department of Labor and Industries) has determined the Prevailing Wage Rates for this work. The enclosed rates apply only to this work.

- The Prevailing Wage shall become part of the contract signed between the successful bidder and the awarding authority or the contract is invalid.
- Prevailing Wages must be paid to all persons employed on the public works project, regardless of whether they are employed by the successful bidder or a subcontractor.
- The wage rates issued for each project shall be paid for the entire project. Payroll records must be kept by the successful bidder for all persons employed on the project.
- A separate Statement of Compliance must be submitted to the Division of Occupational Safety by every employer, including all prime contractors and subcontractors, when its portion of the work is completed.
- The link entitled "Weekly Payroll Records Report and Statement of Compliance" clearly details these requirements.
- A certified payroll must be submitted to City of Everett Department of Public Works each week work is performed for the city under this contract.
- All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and

- That all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

FOR MORE INFORMATION ON THE OSHA 10-HOUR ONLINE COURSE PLEASE VISIT THE WEBSITE: <http://www.oshacampus.com/osha-10hour-construction.cfm>

20) Per M.G.L. c30 §39M, the Awarded Contractor shall be required to furnish the City of Everett with a payment bond in the amount of 50% of the total contract price.

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

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

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

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

25) Bid forms shall be completely filled in and signed by the Contractor. Forms that are incomplete or obscure, or contain work not in accordance with the specifications will be rejected. Each bid must be submitted on the prescribed forms that are included as pages of this document. All blank spaces for requested prices must be filled in, in ink or typewritten, and must be legible.

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

27) 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.

28) 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.

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

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

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

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.

DEFINITION OF TERMS

Wherever in these specifications or other contractual documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as follows:

BIDDER Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

CONTRACT The Written agreement executed between the City and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor, and materials, and the basis of payment. The Contract includes the Invitation to Bid, Instructions for Bidders, Bid, Contract Agreement, General Conditions, Qualification Statement, Wage Rates, Specifications, Special Provisions, Performance Bonds, General and Detailed plans, any extra work orders and agreements that are required to complete the Construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

DEPARTMENT	The Department of Public Works of the City of Everett, Massachusetts, acting for the city.
DIRECTOR	The Director of the Department of Public Works acting directly or through an authorized representative, such representative acting within the scope of the particular duties entrusted to him.
ENGINEER	The City Engineer of the City of Everett, Massachusetts, or authorized agent or officer.
EXTRA WORK	Work that: <ul style="list-style-type: none"> a. was not originally anticipated and/or contained in the contract; and therefore b. is determined by the Director to be necessary for the proper completion of the project; and c. bears a reasonable subsidiary relation to the full execution of the work originally described in the contract.
LAYOUT	See Right-of-Way.
LOCATION	See Right-of-Way.
MATERIAL	Any substance proposed to be used in connection with the construction of any integral part and/or any appurtenant part and/or any incidental part of the proposed project.
OWNER	The City of Everett, Massachusetts, acting for and through its Department of Public Works.
PLANS	The contract drawings, City Standards, Detail sheets, or exact reproductions thereof, which show the location, character, dimension and details of the work including any alterations thereof permissible under the contract and authorized by duly approved written orders.
PREMISES	City property and anything left on it.
PROPOSAL	The written offer of the Bidder submitted in approved form to perform the work contemplated.
REFERENCE	Where reference is made in the Contractual documents, Publications and Standards issued by associations or Societies, the intent shall be to specify the current edition of such Publications or Standards (including tentative revisions) in effect on the date of the contract advertisement, notwithstanding any reference to a particular date.

RIGHT-OF-WAY That area which has been laid out or acquired for the purposes of the proposed contractual project.

SHALL “*Shall*” is mandatory; “*may*” is permissive.

SPECIAL PROVISIONS The special directions, provisions and requirements prepared to cover proposed work not satisfactorily provided for by the specifications. These special provisions shall be included within the general term "Specifications" and shall be made a part of the contract with the express purpose that they shall prevail over all other specifications.

SPECIFICATION The directions, provisions and requirements contained herein, together with all written agreements made or to be made pertaining to the method and manner of performing the work, or the quantities and quantities of materials to be furnished under the contract.

THE WORDS “*As directed*”, “*as permitted*”, “*as required*” or words of like effect shall mean that the direction, permission or requirement of the Director is intended, and similarly the words “*approved*”, “*acceptable*”, “*satisfactory*”, or words of like import shall mean approved by or acceptable or satisfactory to the Director, unless otherwise provided herein. The words “*necessary*”, “*suitable*”, “*equal*” or words of like import shall mean necessary, suitable or equal in the opinion of the Director.

CITY The City of Everett, Massachusetts.

WORK All performance, including the furnishing of materials, labor, tools, equipment and incidentals, required of the Contractor under the terms of the contract.

The words “*complete in place*” shall mean the inclusion of all work, including incidentals, mentioned or implied in the Specifications and on the plans, or work that may reasonably be inferred as necessary to the proper execution of the item, unless payment for any portion of the work is otherwise specifically provided for.

II. BID SUBMISSION REQUIREMENTS

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

- 1) Form of General Bid
- 2) Signed Tax Compliance Certification.
- 3) Signed Certificate of Non-Collusion.
- 4) Signed Certificate of Authority.
- 5) A bid deposit of five percent (5%) of the amount of the base bid. Bid deposit may be in the form of a certified check; a bank, treasurers or cashier’s check; or a bid bond from a surety company.
- 6) Current Certificate(s) of Insurance.
- 7) Reference list.

III. SCOPE OF SERVICES

All lights must be installed/setup and be fully functioning no later than November 17th.

JOB SITE

Bidders are required to fully inform themselves of existing conditions of all the job sites where work will be performed over the life of the contract. Lack of knowledge or unfamiliarity of the project or job sites after the Bid has been awarded will not excuse non-compliance with the requirements of all specifications contained in this bid document.

Bidders should be aware that much of the work will take place in, along, and around public streets and parks, and around buildings open to the public.

All work locations are within the City of Everett.

- **City Hall** is located at 484 Broadway
- **Sweetser Circle** is located at the rotary where main St and Broadway meet
- **Parlin Library** is located on Broadway in Everett Square
- **Braza Grill** is located in Everett Square across from the library
- **Werner Park**

The City of Everett will provide all power and power cords for each location. The City of Everett will provide any ground protection mats as necessary.

IV. QUALITY OF WORK

All work is to be quality work and shall be performed according to the standards of the industry and according to the plans, directions and instructions as presented by the authorized representatives of the City of Everett and must meet all state and the City of Everett's Building Codes.

V. HOURS OF WORK

It is intended that the Contractor shall accomplish the majority of work during normal business hours and on a straight time basis. Work shall not be accomplished on an overtime basis unless prior approval has been obtained from the Public Works Director or his/her designee. Standard hours of work shall be Monday-Friday 7:00 am until 3:30 pm.

VI. RESPONSE TIMES

Non-emergent: Repair must start within two (2) days of receipt of a request initiated by the City of Everett Director or his/her designee.

VII. PERMITS AND LICENSES

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

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

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

VIII. INSPECTION

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

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

IX. WARRANTY OF MATERIALS AND WORKMANSHIP

All materials and equipment provided under the contract shall be listed and labeled for the purpose intended. All work provided under this contract shall have, as a minimum, a one (1) year warranty from the date of final acceptance or manufacturer's warranty thereof against any latent defects, design, materials, workmanship and installation.

Carry the required amount of insurance as shown by the insurance requirement enclosed herewith. Certification of insurance shall be provided to the CITY OF EVERETT prior to commencement of work and not later than fifteen (15) calendar days from notice of contract award. Insurance shall remain in force during the full term of the contractual agreement and/or until work is completed and accepted by the City of Everett.

X. REFERENCES

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

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

XI. RULE FOR AWARD

One contract shall be awarded to the lowest responsive and responsible bidder(s) offering the lowest bid amount. Each contract awarded will have a not to exceed amount for all three years of the contract combined.

XII. COMPENSATION

Per MA State Mandate, the City of Everett does not pay any form of deposit or pre-payment in order for work to begin.

The unit prices shall include cost of fuel, all labor, materials, equipment, overhead, profit, insurance, etc. to cover the finished work.

**FORM OF GENERAL BID
CONTRACT NO. 24-21**

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

- A. The undersigned proposes to furnish all labor, materials and equipment to do all necessary work under this contract for the City of Everett, Massachusetts acting by its mayor and in accordance with the accompanying specifications provided by the **Department of Public Works**, Everett, Massachusetts for the sum 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 execute the contract and furnish the required insurance certificates and a labor and materials bond, 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 agrees that it will commence within seven (7) days after executed contract is delivered to the Contractor.

This Bid Includes Addenda Through No. _____ :

Name of Company: _____

**FORM OF GENERAL BID
CONTRACT NO. 24-21**

LOCATIONS:

SWEETSER CIRCLE **TOTAL \$** _____

- Install lights in a canopy installation on 13 Trees (5,000 Linear Ft)
- City provided C9 lights

PARLIN LIBRARY **TOTAL \$** _____

- Install Branch Wrap installation on 4 smaller trees (600 Linear FT)
- Install Canopy installation on 2 large trees (1,000 Linear Ft)
- City provided C9 lights on large trees
- City provided CBright CPIXEL String lights on Small trees

BRAZA GRILL **TOTAL \$** _____

- Install Lights in a canopy installation on 2 small trees (300 Linear FT)
- Install Lights in a canopy installation on 1 live Christmas tree (5,000 Linear Ft)
- City provided C9 lights on Trees

CITY HALL **TOTAL \$** _____

- Install Lights in a canopy installation on 5 small trees (750 Linear Ft)
- City provided CBright CPIXEL String lights on trees

WERNER PARK **TOTAL \$** _____

- Install Lights in a canopy installation on Live Christmas Tree
- Install Branch wrap 8 Large Trees (2,000 Linear Ft)
- Install Branch Wrap 6 Small Trees (650 Linear Ft)
- City Provided C9 Lights on Live Christmas Tree (1,500 Linear Ft)
- City Provided CBright CPIXEL String lights on small and large trees

BID TOTAL FOR HOLIDAY LIGHTS - Contract 24-21

\$

Total (written) (figures)

The undersigned certifies under penalties of perjury, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish [sic] documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration. M.G.L. c. 30, § 39S(a)

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

Name of Firm: _____

By: _____
(Signed Name) (Title) (Date)

(Printed Name) (Title)

Business Address: _____

City, State, Zip Code: _____

Tel. No: _____; Fed. ID No.: _____

Email: _____

SAMPLE DO NOT RETURN

CITY OF EVERETT
CONTRACT No. 24-21
CITYWIDE HOLIDAY LIGHTS
AND RELATED WORK

CONTRACT AGREEMENT BETWEEN CITY AND CONTRACTOR

This Contract Agreement made this _____ day of _____ by and between the City of Everett, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting by the Mayor (hereinafter referred to as the “City”, the “Owner”, or the “Awarding Authority”), without personal liability for the members thereof, and _____, a _____, with a usual place of business at _____ (hereinafter called "the Contractor").

Terms used in this Contract Agreement that are defined in the General Conditions of the Contract shall have the meanings designated therein.

The city and the Contractor agree as follows:

ARTICLE 1 – INCORPORATION OF STATUORY REQUIREMENTS

In all respects, this Contract Agreement shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts including, but not limited to, all Massachusetts General Laws and regulations regarding public construction and procurement and all Municipal Ordinances and by-laws pertaining to the Project and/or the award of this Contract, each as most recently amended (collectively “Laws”). Such Laws shall be deemed to be included in this Contract Agreement the same as though written out in full and the Contractor warrants that he is familiar with and agrees to abide by all such Laws.

ARTICLE 2 - DEFINITION

The term "CITY" shall also mean the City of Everett Director of Public Works (Director), or his designated representative, when used in the context of administering or directing this contract and/or the work specified.

ARTICLE 3 - SCOPE OF WORK

A. The Contractor shall furnish all labor, tools, materials and equipment and shall perform all work necessary for the complete and satisfactory performance of the CITYWIDE HOLIDAY LIGHTS within the City of Everett, Massachusetts, as called for in the Specifications (Section VI), and shall do everything required by this Contract Agreement. The following constitute the Contract Documents:

- a. This Contract Agreement;
- b. Form of General Bid, signed by Contractor;
- c. Specifications;

- d. Wage Rates;
- e. Invitation to Bid, with General Instructions for Bidders
- f. General Conditions; and
- g. Equal Employment Opportunity Program
- h. Required Forms

These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment to this agreement must be in writing and signed by an official with authority to bind the City.

ARTICLE 4 – TIME FOR COMPLETION

A. It is hereby understood and mutually agreed by and between the Contractor and the City that the Contractor shall receive no less than one (1) calendar week's advance notice to begin the project, and that once accepted by the Contractor, the agreed upon starting date(s) for such work become ESSENTIAL CONDITIONS of this contract.

C. The Contractor agrees that said work shall be executed regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time agreed to by the Contractor and the Owner. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described therein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. The Contractor hereby agrees that it has taken these factors into account and the Contractor shall have no entitlement to an increase in the Contract Sum or any other additional costs, expenses or damages of whatsoever nature as they may relate to or otherwise arise from any delay, impact, or acceleration, except as and to the extent expressly provided under M.G.L. c. 30, § 39O. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time provided the Contractor complies with notice requirements contained in the Contract Documents.

ARTICLE 5 - QUANTITY

The work under this contract shall be performed "As Required" by the City, within the limits of this Article V, and Article VIII below. **THE QUANTITIES SPECIFIED IN THE FORM OF GENERAL BID ARE ESTIMATES OF REQUIREMENTS FOR USE IN COMPARING BIDS: THE CITY OF EVERETT DOES NOT GUARANTEE THESE QUANTITIES WILL ULTIMATELY BE REQUIRED.**

ARTICLE 6 - HOURS OF WORK

A. It is intended that the Contractor will accomplish the work of this contract between the hours of 7:00 A.M. and 3:00 P.M. Upon mutual agreement between the City, and the Contractor, night work may also be considered.

B. No laborer, worker, mechanic, foremen or inspector working within the Commonwealth of Massachusetts in the employ of the Contractor, subcontractors or other persons doing or contracting to do the whole or part of the work contemplated by this contract, shall be required or permitted to work

more than 8 hours in any one calendar day; or more than 48 hours in one week, or more than 6 days in any one week in full compliance with the provisions of M.G.L. c. 149, § 34, except in cases of emergencies.

ARTICLE 7 - PAYMENTS TO CONTRACTOR.

A. Payment to the Contractor shall be made by the City in accordance with Massachusetts General Laws.

B. Payments to Subcontractors. The Contractor shall make payment to subcontractors in accordance with M.G.L. c. 30, § 39F, which is quoted in this section below. For purposes of this Contract Agreement, the word “forthwith” appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean “within five (5) business days.” The Contractor shall, at the City’s request, furnish satisfactory evidence that all such obligations have been paid, discharged, or waived. M.G.L. c. 30, § 39F provides:

“(1) (a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the Plans and Specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (1) and (2) the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to

or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (5) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (6) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a General contractor amount which, together with the deposits in interest bearing accounts pursuant to subparagraph (6) are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such

amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (1) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (1), the subcontractor may demand direct payment by following the procedure in subparagraph (4) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to subparagraph (6) shall be subordinate to the rights of all subcontractors who are entitled to be paid under this section and who have not been paid in full.

(3) “subcontractor” as used in this section (I) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposit as provided in subparagraph (6) by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (6) by a petition in equity in the superior court against the awarding authority and the general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general Contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the awarding authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the awarding authority has made a direct payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (5) and in subparagraph (6).

(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of subparagraph (5) and in subparagraph (6) any amount held under a trustee writ or pursuant to a restraining order or injunction.”

ARTICLE 8 - CONTRACT SUM

The total amount billed under this contract shall not exceed \$ _____. The Contractor shall keep and maintain all records necessary to ensure this total billing limit is not exceeded.

ARTICLE 9 - BONDS

If awarded, the Contractor shall furnish a labor and materials PAYMENT BOND [AIA Document A312-2010 Payment Bond - Sample](#) for 50% amount of the Contract, the form of which bonds are set forth in the Contract Documents, each of a surety company qualified to do business under state laws and satisfactory to the Owner, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall (a) guarantee the faithful performance by the Contractor of all its obligations under this contract and (b) constitute the security required by Massachusetts General Laws Chapter 149, Section 29 and Chapter 30, Section 39A, as amended, for payment by the Contractor or its subcontractors used or employed in connection with the contract. Each bond shall incorporate by reference the terms of

this contract. These bonds shall remain in effect for the entire guarantee period for each phase of the work, which shall commence on the date of Substantial Completion, as defined in the General Conditions. The Surety Company providing the bonds shall have a rating of A or better within the Best Key Rating Guide and be licensed by the Massachusetts Division of Insurance. The Contractor shall pay the premiums for such Bonds.

ARTICLE 10 - INSPECTION AND CORRECTION OF WORK

The Contractor shall keep the City informed of the progress of his work. No work shall be closed or covered until it has been duly inspected and approved. Should uninspected work be covered, the Contractor shall, at his own expense, uncover all such work so that it can be properly inspected and after such inspection, he shall properly repair and replace all work interfered with. All work, all materials (whether incorporated in the work or not) and all processes for performing the work shall be at all times and places subject to the inspection, examination and testing by the City, which shall be the final judge of the quality and suitability of the work, materials and processes for the purpose for which they are used. The City shall have the right to reject defective material and workmanship or require its correction. Rejected material shall immediately be removed from the site. If, in the opinion of the City, it is undesirable to replace any defective or damaged materials or to correct any portion of the work not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Director shall be equitable. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, the City may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and Surety being liable for any damage to the same extent as provided.

Neither the final certificate, nor payments, nor any provision in the contract shall relieve the Contractor of responsibility for faulty materials or workmanship, any defects, omissions or mistake of the Contractor or his employees, and he shall remedy any defects due thereto, and pay for any damage to any work resulting therefrom, which shall appear within a period of one (1) year from the date of successful completion.

If, within one year after the date of Final Completion, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner, the Owner may correct it. However, if the correction or repair of this Work is required to avoid impacts to the maintenance, operation or safety of the Owner's facilities, the Owner reserves the right to undertake the repairs, at the Contractor's expense prior to notifying the contractor or without waiting for the Contractor to respond, without waiving the Owner's rights under the warranties and Owner's right to correct Work. The Contractor shall advise the Owner in writing, 60 days prior to the end of the one-year period for correction of work, that sixty (60) days remain in the applicable warranty period.

ARTICLE 11 - GENERAL GUARANTY

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions: (i) correct such defective work, or, if it has been rejected by Owner, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work or the work of others therefrom. If Contractor does not begin the repairs within five (5) days of receipt of written notification and promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk, loss or damage, the City may have the defective work corrected or the rejected work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

ARTICLE 12 - INSURANCE AND WORKMEN'S COMPENSATION

A. The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires. All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of A- or better as assigned by AM Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the City. The Contractor shall file a certificate of insurance one certified complete copy of all policies and endorsements with the City prior to execution of this Agreement. If the City is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Owner attributable thereto. Termination, cancellation, or material modification of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the City at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. The Contractor is responsible for the payment of any and all deductibles under all of the insurance required below. The City shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof. The Contractor shall obtain and maintain the following types of insurance in the amounts provided below:

- a. **Broad Form Commercial General Liability** written on a "per occurrence basis" in the amount of at least \$1,000,000 for Each Occurrence, Personal & Adv Injury, Products-Comp/OP AGG and a General Aggregate Limit of a minimum \$3,000,000. Products and Completed Operations should be maintained for up to 3 years after the completion of the project, and the Contractor shall continue to provide evidence of such coverage to City on an annual basis during the aforementioned period. Property Damage Liability shall include coverage for X-C-U hazard of explosion, collapse, and damage to underground property. The City shall be named as an "Additional Insured".
- b. **Automobile Liability** covering owned, non-owned, and hired or borrowed vehicles in an amount of at least \$1,000,000 for Combined Single Limit. The city should be named as an "Additional Insured". The City shall be named as an "Additional Insured."

- c. **Workers' Compensation Insurance** and employer's liability as required by Massachusetts law under Chapter 152 of the General Laws, as amended, and Section 34A of Chapter 149 of the General Laws.

B. The above insurance policies shall also be subject to the following requirements:

- a. Whenever applicable, including, but not limited to Contractor's Broad Form General Liability Insurance, all insurance coverage shall be on an "occurrence basis" and not a "claims-made basis".
- b. The CITY (including its officials, employees, agents and representatives) shall be named as additional insured on Contractor's General Liability, Automobile Liability and Umbrella or Excess Liability Insurance Policies.
- c. Neither the City's authority to review certificates and policies of insurance, nor its decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the City to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, or Supplier, or any other party.
- d. The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in the Contract Documents, and at all times after that when the Contractor may be correcting, removing or replacing defective Work. The Completed Operations insurance shall be maintained for three (3) years after Final Payment.
- e. Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Contract.
- f. The Contractor shall be responsible for procuring at its sole cost property insurance covering portions of the Work stored off the site or in transit.

ARTICLE 13 - PERSONAL LIABILITY OF PUBLIC OFFICIALS

No official of the City of Everett or its agents or employees shall be held personally responsible for any liability arising under the contract.

ARTICLE 14 - INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and any of its officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall apply to any such claims, damages,

losses and expenses which arise and/or are incurred by any person or entity either during the performance of the Work and/or after completion of construction. Nothing in this paragraph shall be construed to negate, abridge, or reduce other rights or obligations of indemnity or contribution which would otherwise exist as to a party or person indemnified hereunder. Contractor hereby assumes the responsibility and liability for injury to or death of any and all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from, or arising out of any act, omission or neglect on the part of the Contractor, or of any Subcontractor or of anyone directly or indirectly employed by any of them or of anyone for whose acts, any of them may be liable. The Contractor hereby acknowledges its obligation under the foregoing paragraph to indemnify the City against judgments suffered because of the contractor's work and to assume the cost of defending the City against claims as described in the foregoing paragraph.

ARTICLE 15 - ASSIGNMENT

The Contractor shall not assign this contract wholly or in part, or sublet (subcontract) it or any part thereof, nor shall the Contractor assign any moneys due or to become due to him under this contract, without previous written consent of the City.

ARTICLE 16 - REPORTS, RECORDS, AND DATA

The Contractor shall submit to the City such schedule of payrolls, records, and other data as the City may require concerning work performed or to be performed under this contract.

ARTICLE 17 - PREVAILING WAGE

The contractor shall pay Mass. Prevailing Wage Rates. The applicable prevailing wage rates are attached as part of this bid package and will be included in the resulting contract. Notwithstanding anything to the contrary, the City may, in its sole discretion withhold payment unless the City has in its possession payroll records that are complete, accurate, and current as of the date of said application for payment.

The Contractor shall:

Pay wages at least once a week;

Submit payroll information on a weekly basis in a format approved by the City, numbered in numerical sequence and signed by the Contractor (including forms for weeks when the Contractor is not on the Project Site, in which case there shall be a notation to the effect "no work this payroll period" and a date anticipated for resuming work).

ARTICLE 18 - NON-DISCRIMINATION

The Contractor agrees that in the performance of this contract, discrimination shall not be permitted by or against any person because of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability, in any manner prohibited by the laws of the United States, the Commonwealth of Massachusetts or the By-laws of the City of Everett.

ARTICLE 19 - TERMINATION

A. Lack of 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.

B. Termination for Convenience. The City may terminate this contract at any time without cause upon thirty (30) days prior notice.

C. Termination for Cause. If the Contractor shall be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency or if he should persistently or repeatedly refuse, or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials or equipment, or if he should fail to make prompt payments to subcontractors, or for material or labor or persistently disregard laws, ordinances or the instructions of the Director or otherwise be guilty of substantial violation of any provision of the contract, then the City without prejudice to any other right or remedy and after giving the Contractor seven (7) days' notice may terminate the employment of the Contractor to continue work and may take possession of the premises, and all the materials, tools, equipment and appliances thereon, and finish the work by whatever method the City deems expedient. The City shall be entitled to collect from the Contractor all direct, indirect, consequential damages suffered by the City of behalf of the Contractor's defaults, including without limitations additional services and expenses of the Architect and Project Manager and the Architect's consultants made necessary thereby. The City shall be entitled to hold all amounts due to Contractor at the date of termination until all of the City's damages have been established, and to apply such amounts to such damages.

D. In the event of termination, the Contractor 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 Work performed under this Agreement to the time of termination, and thereupon the City shall pay to the Contractor any unpaid and undisputed balance owing for Work performed prior to the date of termination. Any termination of this Contract shall not affect or impair the right of the City to recover damages occasioned by any default of the Contractor or to set off such damages against amounts otherwise owed to the Contractor.

ARTICLE 20 - PROTECTION OF ABUTTING PROPERTIES

The Contractor shall be responsible for protecting his own work and all nearby abutting properties from damage resulting from his performance of the contract. He shall pay particular attention to trees, shrubs, lawns, steps, walks, etc. abutting the work and shall save them from damage and harm. If the contractor damages such trees, shrubs, etc., and the Contractor shall, at its own expense, restore such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner. If the Contractor shall fail to promptly restore such property, an amount equal to the damage done shall be deducted from his payment. Such reduction shall be determined by the Director and shall be final and binding.

Where the damage or loss presents an immediate danger to the public, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage or loss without prior notice to the Contractor.

The contractor is responsible to see that his equipment, tools, materials, and men shall not be placed on or allowed to overrun onto abutting private properties.

ARTICLE 21 - MATERIAL HANDLING, STORAGE AND CLEANUP

- a) The Contractor shall, at his own expense, handle and haul all materials furnished by him and shall remove any of his surplus materials at the completion of the work. The Contractor shall provide suitable and adequate storage for equipment and materials furnished by him that are liable to injury and shall be responsible for any loss of or damage to any equipment or materials by theft, breakage, or otherwise. The Contractor shall be responsible for all damage to the work under construction during its progress and until final completion and acceptance even though partial payments have been made under the Contract. Unless permission to close the street is received in writing from proper authority, all excavated material shall be placed so that vehicular and pedestrian traffic may be maintained at all times.

- b) The Contractor expressly undertakes at his own expense:
 - to take every precaution against injuries to persons or damage to property;
 - to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
 - to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
 - to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
 - before final payment to remove all surplus material, falsework, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition; and
 - to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor.

- c) The Contractor shall at all times keep the adjacent properties free from an accumulation of waste material or rubbish caused by his employees or work, and at the completion of the work he shall remove all rubbish, tools, equipment and materials from the adjacent properties and highways and shall leave his work "Broom Clean".

ARTICLE 22 - RESIDENT ENGINEER

The Contractor shall designate an employee to act as resident engineer at the site of the work and shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable

to the Engineer and shall be one who can continue in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

ARTICLE 23 – POLICE DETAILS

The use of police officers must be approved by the DPW Director. The City will provide police officers only when said use is specifically approved by the Director. Payment of police details will be paid directly by the City to the Police Department. The Contractor shall be required to notify the Everett Police Department of any cancellation in scheduled police details resulting from changes or cancellation of intended work. Such notification shall occur a minimum of one (1) hour before the scheduled time of the detail officer. The Contractor shall be responsible for all costs associated with the lack of notification or late notification of detail cancellations at NO additional cost to the owner.

ARTICLE 24 - SURVEY INFORMATION

The Engineer will furnish basic information pertaining to layouts, bench marks, etc. sufficient for controlling the location and grades of the work. The Owner makes no warranties as to the accuracy or completeness of information furnished by the Engineer. The Contractor shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall, at his own expense, furnish all necessary equipment, personnel, stakes, etc. and shall lay out the work in detail, as required, including lines and grades as necessary in each instance. All reference marks shall be verified by an instrument at frequent intervals and the Contractor shall be responsible for the accuracy of all lines and grades relative to the project.

The Contractor shall be responsible for the correct location and elevation of all components of the project as shown on the Contract Drawings.

ARTICLE 25 - USE OF EXPLOSIVES

When the use of explosives is necessary for the execution of the work, the Contractor shall observe the utmost care not to endanger life and property, and whenever directed, the number and size of the charges shall be reduced. All explosives shall be stored in a secure manner and all such storage places shall be clearly marked "DANGEROUS EXPLOSIVES" and shall be in the care of competent watchmen at all times.

The use of explosives will be limited to between the hours of 9:00 A.M. to 3:30 P.M. unless express permission in writing is received from the Engineer. The method of storage, use, and handling explosives and highly inflammable materials shall conform with all State Laws and regulations pertaining thereto. The Contractor shall obtain all necessary permits relating to the storage and uses of explosives.

The Contractor shall bear all losses resulting from the use or storage of explosives and highly inflammable materials and shall indemnify, defend and save harmless the Owner and all of its officers, board members, agents, and employees from all suits, damages, claims, liabilities or judgments for bodily injuries or death to any person and for property damage or damage destruction arising out of the use or storage of explosives and highly inflammable materials.

ARTICLE 26 - BARRICADES, WARNING SIGNS AND TRAFFIC CONTROL

All roadways on which work is being performed shall be kept open to local traffic at all times except when specified detours are authorized, in writing, by the DPW Director or his or her designee. **It shall be the contractor's responsibility to provide detour signs, as directed by the Engineer and/or Police Department, that are clearly readable and permanent insofar as the duration of the work on each street is concerned.**

The Contractor shall leave the site accessible from either end as to allow access for fire department vehicles and residents. He shall also notify the police and fire departments at the close of each working day as to his location and area conditions. The Contractor shall, at all times, provide, place and erect all necessary barricades and warning signs and furnish and keep lighted all lights necessary to protect the work from traffic, pedestrians and animals. He shall also furnish at his own expense a sufficient number of watchmen at all times to protect the work. All open excavations shall be adequately safeguarded by providing the necessary temporary barricades, caution signs, lights and other means to prevent accidents to persons, and damage to property. The Contractor shall, at his own expense, provide suitable and safe means for completely covering all open excavations and for accommodating travel when work is not in progress. Bridges provided for access to private property during construction shall be removed when no longer required. The length of open trench will be controlled by the particular surrounding conditions but shall always be confined to the limits prescribed by the Engineer. If the excavation becomes a hazard, or if it excessively restricts traffic at any point, special construction procedures such as limiting the length of open trench, prohibiting stacking excavated material in the street, backfilling, and or restricting working hours shall be taken as specified by the Engineer. The Contractor shall fully comply with the Dig Safe Laws.

The Contractor shall be responsible for all damage to the work due to any failure of signs and barricades to protect the work properly from traffic, pedestrians, animals or other causes and shall, at its own expense, restore any such damage to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner. If the Contractor shall fail to promptly repair the damage, an amount equal to the damage done shall be deducted from his payment. Such reduction shall be determined by the Director and shall be final and binding. Where the damage or loss presents an immediate danger to the public, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage or loss without prior notice to the Contractor.

ARTICLE 27 - AUTHORITY AND DUTIES OF DIRECTOR'S ASSISTANTS

The Director may appoint such assistants and representatives as he deems necessary and they shall be authorized to inspect work and materials, to give directions pertaining to the work or the safety and convenience of the public, to approve or reject materials and workmanship, to make measurements of quantities and to perform such other duties as may be designated by the Director.

In case of any dispute arising between the Contractor and the Director's assistants, as to materials furnished or the manner of performing the work, the Director's assistants shall have the authority to reject the materials or to suspend the work until the question at issue can be referred to and decided by the DPW Director.

The Director's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of the contract and specifications, nor to issue any instructions contrary to the plans and specifications. They shall in no case act as foreman for or perform other duties for the Contractor.

ARTICLE 28 - SUBLETTING OR ASSIGNMENT OF CONTRACT

The Contractor shall give his personal attention constantly to the faithful execution of the work, shall keep the same under his personal control, and shall not assign by power of attorney or otherwise or sublet the work or any part thereof without the previous written consent of the Department of Public Works and shall not either legally or equitably assign any of the moneys payable under this agreement, or his claim thereto, unless by and with the written consent of the Department of Public Works. He shall be responsible for the acts and omissions of his subcontractors, if any, and of all persons directly or indirectly employed by him or them in connection with the work. The Contractor shall notify the Director, as soon as practicable after the execution of the contract, the name and address of each subcontractor, his duties, and such other information the Director may require in order to ascertain whether the subcontractor is reliable and able to perform the work.

The Department of Public Works will make a periodic pay estimate for the Contractor only, regardless of the fact that the Contractor employs one or more subcontractors. It shall be the Contractor's responsibility to determine the amount of work that is payable to his subcontractors.

ARTICLE 29 - TEMPORARY SUSPENSION OF WORK

The Director shall have the authority to suspend the work wholly or any part thereof, for such period as he may deem necessary, because of unsuitable weather conditions, for the safety and convenience of the public, or for such other causes as are considered unfavorable for the satisfactory completion of the work, or for such time as he may deem necessary due to the failure of the contractor to carry out orders given or to perform any provision of the contract. The work shall be resumed when conditions so warrant or deficiencies have been corrected and the conditions of the contract satisfied as ordered or approved by the Director.

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and will cause his Subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials have been damaged or injured by reason of failure on the part of the Contractor or his Subcontractors to protect his or their work, such materials shall be removed and replaced at the expense of the Contractor.

ARTICLE 30 - MEASUREMENT OF QUANTITIES

The quantities of the various items of work performed shall be determined by the DPW Director.

Upon the completion of the work and before final payment is made the Director will make final measurement to determine the quantities of the various items of work performed, as the basis for final settlement. All measurements shall be made according to the United States Standard units of measurement.

ARTICLE 31 - WORK WEEK

The Contractor shall work the regular eight (8) hour day, five (5) day work week, Saturdays, Sundays and Holidays excluded. If the Contractor wishes to work more than an eight (8) hour day, five (5) days week and on Saturday, Sundays and Holidays, he shall first receive permission in writing from the Director. If the Contractor so elects and the necessary permission is secured from the Director, the cost of inspection of the work shall be borne by the Contractor and payment for same shall be deducted from his contract payments at the rate as paid by the City, the Director will assign inspectors to the project as are in his opinion necessary for the proper supervision of the work.

ARTICLE 32 - PROTECTION OF AND REPAIR TO UTILITIES

The Contractor shall exercise extreme care during excavation of trenches so that utilities, underground or overhead, shall not be damaged. Utilities shall include wires, pipes, poles, manholes, catch basins, conduits and allied items. When any utility is clearly shown on the plan or clearly identified in the field, the Contractor shall assume full responsibility for the damages and shall pay for or repair all damages thereto however made to the satisfaction of the agency having jurisdiction. If the Contractor shall fail to promptly pay for or repair such utilities, an amount equal to the damage done shall be deducted from his payment. Such reduction shall be determined by the Director and shall be final and binding. Where the damage or loss presents an immediate danger to the public, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage or loss without prior notice to the Contractor.

In the case of accidental damage to surface and sub-surface utilities, the company whose utility was damaged will be responsible for the repairs. The contractor will be responsible for contacting the utility company as soon as possible so that the repair can be made. Only upon receiving written permission from the owners of the utility, will the contractor be allowed to make the repairs themselves. The payment for the repair will be made after an investigation into why the utility was damaged. The cost for the repair will be borne by the party found at fault for the damage. No additional payments will be made for loss of time due to "down time" created by the damaged utility.

ARTICLE 33 - CONSTRUCTION MACHINERY

Construction machinery used shall be of such kind and used in such a manner and in such locations as not to unnecessarily injure road surfaces, fences, poles, trees, shrubs, buildings, walks, pipes, conduits, cables, wires, catch basins, manholes, etc.

The Contractor shall use a small type construction machinery where the physical aspects of the site do not provide sufficient room for maneuvering a larger machine in a normal manner without damage to abutting properties.

ARTICLE 34 - DAMAGE SUITS AND CLAIMS

The Contractor shall compensate the Owner for all damages to its property of any nature arising out of the Contractor's work; and the Contractor shall indemnify, defend and hold harmless the Owner and the Engineer and their agents and employees against all suits, claims or liability of every name and nature and from all claims for things which the Contractor is required to furnish under this contract and for or on account of any injuries to persons or damage to property or nuisances or trespasses, and specifically including death and consequential damages, arising out of or in consequence of the acts of the Contractor in the performance of the work covered by the Contract or failure to comply with the terms and conditions of the Contract, whether by the Contractor or his agents, employees, or subcontractors, and whether or not such claims, demands, suits, or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings. This section shall apply to "Extra Work" and all other operations by the Contractor in connection with this Contract.

ARTICLE 35 - WEATHER CONDITIONS

The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 to March 31 as required by M.G.L. c. 149, § 44F.

ARTICLE 36 - REJECTED MATERIALS AND DEFECTIVE WORK

Materials furnished by the Contractor and condemned by the Engineer as unsuitable or not in conformity with the specifications shall be forthwith removed from the work by the Contractor, and shall not be made use of elsewhere in the work. Any errors, defects or omissions in the execution of the work or in the materials furnished by the Contractor, even though they may have been passed or overlooked or have appeared after the completion of the work, discovered at any time before the final payment is made hereunder, shall be forthwith rectified and made good by and at the expense of the Contractor and in a manner satisfactory to the Engineer. The Contractor shall reimburse the Owner for any expense, losses or damages incurred in consequence of any defect, error, omission or act of the Contractor or his employees, as determined by the Engineer, occurring previous to the final payment. If the Contractor shall fail to promptly reimburse the Owner for any such expense, loss or damage, an amount equal to the expense, loss or damage shall be deducted from his payment. Such reduction shall be determined by the Director and shall be final and binding.

ARTICLE 37 - SANITARY REGULATIONS

Sanitary conveniences for the use of all persons employed on the work, properly screened from public observation, shall be provided in sufficient numbers in such manner and at such locations as may be approved. The contents shall be removed and disposed of in a satisfactory manner as the occasion requires. The Contractor shall rigorously prohibit the omittance of nuisances within, on or about the work. Any employees found violating these provisions shall be discharged and not again employed on the work without the written consent of the Engineer. The sanitary conveniences specified above shall be the obligation and responsibility of the Contractor.

ARTICLE 38 - MAINTENANCE OF DRAINAGE FACILITIES

All existing drainage facilities including, but not limited to, brooks, streams, canals, channels, ditches, culverts, catch basins and drainage piping shall be adequately safeguarded so as not to impede drainage in any manner whatsoever. The Contractor will ensure that no obstruction to, siltation of, or discharge of wastewater into existing drainage facilities occurs. If the Contractor damages or impairs through circumstances beyond his control any of the aforesaid drainage facilities, he shall repair the same within the same day. If the Contractor shall fail to repair any such damage to a drainage facility, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage without prior notice to the Contractor.

ARTICLE 39 - IMPLICATION OF THE WORDS "APPROVED EQUAL" OR "APPROVED SUBSTITUTE"

The use of the words "Approved Equal" or "Approved Substitute" following the name of any manufacturer, vendor or proprietary product shall be understood to mean that articles or materials may be substituted which, in the opinion of the Director, are equal in quality, durability, appearance, strength, design and performance to the articles or materials named or described and will perform adequately in providing a first-class facility. If articles or materials are accepted as equal to those on which dimensions on the drawings are based, any dimensional variance from those shown and/or specified shall be shown on the shop drawings prepared by the Contractor, illustrating the manner in which conformity to dimensions and design is to be obtained. All such drawings shall be subject to the approval of the Director and the installation of the article shall not proceed without first obtaining said approval.

ARTICLE 40 - WATER FOR CONSTRUCTION PURPOSES

In locations where water is in sufficient supply, the Contractor may be allowed to use water for construction purposes. The express approval of the Owner shall be obtained before water is used. Waste of water by the Contractor shall be sufficient cause for withdrawing the privilege of unrestricted use.

ARTICLE 41 - PROTECTION OF LIVES AND HEALTH

In order to protect the lives and health of his employees under this contract, the Contractor shall comply with the requirements of the Occupational Safety and Health Act and the Construction Safety Act of 1969, which are incorporated herein by reference, and all standards and regulations promulgated by the governmental and regulatory bodies responsible for administration thereof. The Contractor shall be responsible for compliance with such Acts, standards and regulations by its officers, agents, employees, Subcontractors, Sub-subcontractors, suppliers and material. The Contractor shall indemnify and hold harmless the Owner and the Engineer from any and all fines, costs and expenses, including but not limited to reasonable attorney's fees, incurred by Owner and Engineer due to violation of such Acts, standards and/or regulations.

ARTICLE 42 - SUSPENSION OF WORK

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to set forth in writing.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Engineer on account of any delay in the commencement of the work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Engineer, or otherwise. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time, and such remedy shall be available only if the Contractor complies with notice requirements contained in this Agreement.

No extension of time shall be granted because of seasonal, normal or abnormal variations in temperature, humidity, or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. Any additional cost of operations or conditions resulting therefrom shall be the responsibility of the Contractor.

ARTICLE 43 - SUBSURFACE CONDITIONS FOUND DIFFERENT

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing Site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

ARTICLE 44 - EXTENSION OF TIME

When extra work is ordered at any time during the progress of the work which requires in the opinion of the Engineer an unavoidable increase of time for the completion of the contract, a corresponding extension of the time of completion will be allowed, subject to prior approval of the Owner.

ARTICLE 45 - ABANDONMENT OF WORK

If the work to be done under this contract shall be abandoned, or if this contract or any part thereof shall be abandoned, or if this contract or any part thereof shall be sublet without the previous written consent of the Owner, or if the contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this contract, the Owner may notify the Contractor by a written order with a copy mailed to the home office of the Surety to discontinue all work, or any part thereof; and thereupon the Contractor shall discontinue such work or such part thereof as the Owner may designate, and the Owner may thereupon: by contract or otherwise, as it may determine, complete the work, or such part thereof, and charge the entire expense of so completing the work or part thereof to the Contractor; and for such completion the Owner for itself or its contractors may take possession of and use or cause to be used in the completion of the work or part thereof, any of such materials, equipment, machinery, implements, and tools of every description as may be found at the location of said work. The right is reserved to the Owner, at all times, to call upon Contractor's Surety to complete such work.

All expenses charged under this article shall be deducted and paid by the Owner out of any moneys then due or to become due the Contractor under this contract, or any part thereof; and in such accounting the Owner shall not be held to obtain the lowest figures for the work of completing the contract or any part thereof or for insuring its proper completion but all sums actually paid therefor shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under this contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner.

ARTICLE 46 - ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from any obligations under this contract or the Performance and Payment Bond.

The Final Estimate shall be certified by the Engineer as to its conformity with all provisions of the contract, and shall be certified by the Contractor to the effect that all just and lawful bills against the Contractor for labor, materials, and expendable equipment covered by the estimate have been paid in full, and that the amount stated as due the Contractor for payment is full compensation for all work done under the terms of the contract, including change and Extra Work Orders and for all damages, losses and expense incurred by the Contractor in doing the work, and that the Contractor waives all rights to claim or receive any further compensation in addition to that provided in the Final Estimate.

ARTICLE 47 - RETAIN FOR REPAIRS

The Owner may, after the final completion of the work, retain out of the moneys due the Contractor under this contract such sum of money as may, in the judgment of the Engineer, be required to cover the cost of any repairs as set forth above, and may expend the same in the manner provided therefor in making such repairs.

It is agreed, however, that the Owner may apply the sum so retained to payment of other claims arising and made payable by the Contractor under the provisions of the Contract but remaining unsatisfied.

ARTICLE 48 - CLAIMS FOR EXTRA COST

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to amounts relating thereto.

The Contractor hereby acknowledges that the Owner has the contractual right to delay the Work. Such right may not be exercised unreasonably. In addition, Contractor shall not be entitled to additional compensation as a result of delay, even if caused by the Owner or those for whom the Owner is responsible. The Contractor's sole remedy for any delay is an extension of time, notwithstanding the above. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

ARTICLE 49 - SEPARATE CONTRACT

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

The Contractor shall coordinate his operations with those of other Contractors. Cooperation may be required in the arrangement for storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other Contractors.

The Owner shall be reimbursed by the Contractor for costs incurred by the Owner that are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

ARTICLE 50 - CONFLICTING CONDITIONS

In the event of conflict in or between the Contract Documents, the Contractor shall be held to the highest standard contained in either of them. Where compliance with two or more industry standards or set of requirements is specified, and overlapping of those different standards or requirements established different or conflicting minimums or level of quality, the most stringent requirements are intended.

In the event of a conflict between any provision or language of these General Conditions and any provision or language of the Contract Documents, the provision or language of these General Conditions shall control. In the event of any conflict or inconsistency between these General Conditions, the Contract Documents and any applicable state law, the applicable statutory provisions shall prevail.

ARTICLE 51 - DISCREPANCIES, ERRORS AND OMISSIONS

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become thoroughly familiar with all the existing conditions at the site, has taken all such conditions into consideration as they may affect the Work under its Contract, and correlated personal observations with requirements of the Contract Documents. No allowance will be made in the Contract or the Work under the Contract for failure of the Contractor to visit the site.

Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to these General Conditions, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer, in writing, any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Before starting the work and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the contract documents with each other and with the information furnished by the Owner pursuant to this Article and shall at once report to the Engineer any error, inconsistency or omission the Contractor may discover. Any necessary change will be ordered as provided in Article 5, subject to the requirements of other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice, the Engineer, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents it could be discovered such, the Contractor shall bear all cost arising therefrom.

The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer and Owner, in writing any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer and Owner may require.

Should any omissions, error or conflict be found in the Contract Documents, during the bidding period and prior to the times set forth in the Instructions to Bidders for receipt of such inquiries, the bidders shall request in writing that such conditions be explained by the Engineer in the method described therein.

Should the work proceed, after the discovery of errors, conflict, or omissions by the Engineer and clarification has not been received from the Engineer, the Contractor will be held fully responsible for replacement or correction of the affected area, as directed by the Engineer, at the Contractor's expense.

ARTICLE 52 - DISTURBANCE TO PROPERTY MARKERS AND BOUNDS

Any property markers or street bounds shall not be removed or disturbed. If it becomes necessary to **remove and reset** any property markers or street bounds then the contractor shall hire a Registered Professional Land Surveyor to perform this work. It shall be the responsibility of this Land Surveyor to submit to the City, a statement in writing and a plan containing his/her stamp and signature showing that said work has been performed.

ARTICLE 53 – MISCELLANEOUS

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.

Conflict of Interest. Both the City and the Contractor stipulate to the applicability of the State Conflict of Interest Law (M.G.L. c. 268A), and this contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated its applicability to the performance of this contract; and by executing the contract documents the Contractor certifies to the City that neither it nor its agents, employees or subcontractors are thereby in violation of M.G.L. c. 268A.

The Contractor warrants that it has complied with all provisions of law regarding the award of this contract and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer anything of any value to any official or employee of the City in connection with this Contract.

The Contractor further warrants that no official or employee of the City including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of the Contractor, and that no official or employee of the City has or will have a direct or indirect financial interest in this Contract.

The Contractor shall not during the term of this Contract *hire or employ* on either a full-time or part-time basis any person or persons *employed by the City*.

Violation of this Article shall be a material breach of this contract and shall be grounds for immediate termination of this contract by the City without regard to any enforcement activities undertaken or contemplated by any enforcement agency. Termination of this contract pursuant to this Article shall not waive any claims for damages the City may have against the Contractor resulting from the Contractor's violation of the terms of this Article.

Record Keeping and Management Controls. The Contractor shall comply with M.G.L. c. 30, § 39R.

Non-Discrimination. The Contractor shall not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of sub-contractors, the procurement of material and rental of equipment, employment decisions or in any aspect of the performance of this contract. The Contractor shall also comply with all applicable laws and regulations pertaining to non-discrimination. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, each potential subcontractor shall be notified by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and it shall be a term of each contract with a subcontractor in connection with the performance of this work under this Agreement, that the subcontractor be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Contractor hereunder.

Independent Contractor. The Contractor is not an employee or agent of the city, but is an independent contractor.

Certification of Non-Debarment or Suspension (MG.L. c. 29, § 29F). By execution of this Contract, the Contractor, pursuant to Section 29F of Chapter 29 of the Massachusetts General Laws, certifies under the penalties of perjury that it is not presently debarred or suspended from doing public construction work in the Commonwealth of Massachusetts pursuant to said section, or any applicable debarment or suspension provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Claims and Disputes. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by the Superior Court of Massachusetts in Suffolk County, if jurisdiction exists, and if jurisdiction does not exist in the Superior Court, said action shall be brought in the Woburn District Court of Massachusetts. A claim, dispute or other matter may be submitted to mediation, in accordance with the provisions of the American Arbitration Association, at the sole discretion of the Owner. Notwithstanding any provision contained in the Contract Documents, the Owner reserves the right to demand arbitration against the Contractor in connection with the Claims and disputes between the Owner and the Contractor, which right may be exercised by the Owner unilaterally and in the Owner's discretion.

Severability. If any provision of this Contract is held invalid by any court or body of competent jurisdiction, the remainder of this Contract shall remain in full force and effect.

ARTICLE 54 - CHANGES IN THE WORK

- a) By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The City, without invalidating the contract, may order extra work or make changes by altering, adding to, or deducting from the work and the contract sum and contract time will be adjusted accordingly. Such changes shall be made by Change Order, Construction Change Directive or order for a minor change in Work, subject to the limitations stated herein and elsewhere in the Contract Documents.
- b) In giving instruction, the Director shall have authority to make minor changes in the work not involving extra cost and not inconsistent with the purposes of the work, but otherwise no extra work or change shall be made unless in pursuance of written order signed by the Director and no claim for an addition to the contract sum shall be valid unless so ordered.
- c) Adjustments in contract sum and contract time resulting from a Modification shall be determined by mutual agreement of the parties, or in the case of a Construction Change Directive signed only by the City, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining cost or credit.
- d) The Contractor shall not sublet any work under a Change Order or a Construction Change Directive unless work under the basic Agreement of a similar type was previously subcontracted; and Subcontractors will not be allowed to further sublet any work under a Change Order unless the work under the basic Agreement of a similar type was previously sublet by them, without the written approval and acceptance of the City.
- e) All changes in the Work shall be in accordance with provisions of the M.G.L. c. 30, § 39I.
- f) Timely Decision by Owner (M.G.L. c. 30, § 39P). Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

ARTICLE 55 - TAX STATUS

The City of Everett is an exempt purchaser under Massachusetts Laws. Exemption Certificate Number is 04-600-1386. The Contractor shall not pay, and the City shall not reimburse or pay the Contractor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

This Agreement, together with Exhibit A (Contractor, Term, Completion), Exhibit B (Scope of Services) and Exhibit C (Payments) and any additional exhibits referred to therein, constitute the entire agreement of CITY and CONTRACTOR with respect to the matters set forth therein and may not be changed, amended, modified or terms waived except by a writing signed by CITY and CONTRACTOR. If there is any conflict between a term set forth in the body of this Agreement and a terms and provisions set forth in Exhibit A or Exhibit B, or in any other attachment hereto, or in any other document or law incorporated by reference herein, such conflict shall be resolved by giving precedence to the party's address above by certified mail, return receipt requested Terms or provisions contained in the following documents in accordance with the following hierarchy, with the topmost document of the highest priority:

A. Applicable federal, state and local laws, rules and regulations.

B. Amendments to this Agreement, if any.

C. This Agreement is governed by the law of The Commonwealth of Massachusetts and shall be construed in accordance therewith.

In WITNESS WHEREOF the parties have hereunto set their hands and seals, the City of Everett by the Mayor, who however incur no personal liability by reason of the execution thereof or of anything herein contained, and the contractor both in triplicate, as of the day and year above stated.

VENDOR:

Date Signed

CITY OF EVERETT:

Brian McCarthy
Business Manager
Date Signed

Allison Jenkins
Chief Procurement Officer
Date Signed

Eric Demas
Chief Financial Officer/City Auditor
Date Signed

Account Number: _____

Colleen Mejia, Esq.
City Solicitor
Date Signed

Carlo DeMaria
Mayor
Date Signed

EXHIBIT B
CERTIFICATE OF NON-COLLUSION

CITY OF EVERETT, Contract No. 24-21

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)

**EXHIBIT C
CERTIFICATE OF TAX PAYMENT**

Contract No. 24-21

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support, as well as paid all contributions and payments in lieu of contributions pursuant to MGL 151A, §19A(b).

(Signature of Authorized Individual)

(Printed Name of person signing)

(Name of business)

(Date)

Social Security Number or
Federal Identification Number

EXHIBIT D

CERTIFICATE OF CORPORATE AUTHORITY

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

held on _____ it was VOTED that:
(Date)

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

A True Copy,
ATTEST: _____
TITLE: _____
PLACE OF BUSINESS: _____

DATE OF THIS CERTIFICATE: _____

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

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

(Clerk)

CORPORATE SEAL:

EXHIBIT E

CERTIFIED PAYROLL FORM

Contractors that have not provided certified payrolls consistently to the City of Everett will be found non-responsible.

WEEKLY CERTIFIED PAYROLL REPORT AND WORK FORCE PARTICIPATION FORM
[HTTPS://WWW.MASS.GOV/DOC/MASSACHUSETTS-WEEKLY-CERTIFIED-PAYROLL-REPORT-FORM-0/DOWNLOAD](https://www.mass.gov/doc/massachusetts-weekly-certified-payroll-report-form-0/download)

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE
[HTTPS://WWW.MASS.GOV/FILES/2017-07/PREVAILING%20WAGE%20WEEKLY%20PAYROLL%20RECORDS%20AND%20STATEMENT%20OF%20COMPLIANCE.PDF](https://www.mass.gov/files/2017-07/prevaling%20wage%20weekly%20payroll%20records%20and%20statement%20of%20compliance.pdf)

EXHIBIT F

Prevailing wage rates schedule attached
Wage Request Number: 20231003-069

BIDDER'S CHECKLIST

Required for bid submittals:

1. Form of General Bid
2. Non-collusion Form
3. Tax Compliance Certificate
4. Certificate of Authority (if applicable)
5. Reference list
6. Proof of Insurance
7. Bid Deposit