

CITY OF EVERETT, MASSACHUSETTS



25-19 Installation of a Perennial Herb and Flower Garden Project

City of Everett
City Hall
484 Broadway
Everett, MA 02149

TABLE OF CONTENTS

Section Number

Bidding and Contract Requirements

Invitation to Bid	00020
Instructions to Bidders	00100
Form of General Bid	00300
Agreement	00500
Construction Payment Bond	00620
Supplemental Conditions	00800
Excerpts from Applicable State Law	00850
Specifications	00900

Attachment A – Wage Rates

SECTION 00020

INVITATION FOR BIDS

Sealed bids for furnishing the following item will be received at the Purchasing Office, City of Everett, 484 Broadway, Everett, MA 02149 until the time specified below at which time the bids will be publicly opened and read.

Specifications and bid forms may be obtained from the Office online at the city website [Purchasing - Everett, MA - Official Website \(cityofeverett.com\)](http://cityofeverett.com)

Bids will be opened in the Purchasing Office on November 13, 2024, at 1:00 p.m.

A payment bond in an amount equal to 50 percent of the total amount of the contract price with a surety company qualified to do business in the Commonwealth of Massachusetts will be required for the faithful performance of the contract.

All bids for this project are subject to applicable public bidding laws of Massachusetts, including, but not limited to G.L. c.30, §39M.

Attention is directed to the minimum wage rates to be paid as determined by the Commissioner of Labor and Workforce Development and the weekly payroll record submittal requirements under the provisions of Massachusetts General Laws, Chapter 149, Section 26 through 27D inclusive.

Selection of the contractor will be based upon bidder qualifications, including evidence of past performance in similar projects, and bid price. The contract will be awarded to the bidder deemed by the awarding authority to be the lowest responsible and eligible bidder.

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

The City reserves the right to waive any informalities, to accept or reject, in whole or in part any or all bids, or take whatever other action may be deemed to be in the best interest of the City.

The City of Everett

By: Allison Jenkins, Chief Procurement Officer

SECTION 00100

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids

The City of Everett, Massachusetts, herein called the Owner, acting by and through its Mayor, will receive sealed Bids for the project known as the 25-19 Main Street Meadow Project.

General bids shall be addressed to the Purchasing Office, City of Everett, 484 Broadway, Everett, MA 02149 and endorsed "Bid for 25-19 Main Street Meadow Project" (Project) will be received at the Purchasing Office until 1:00 p.m. prevailing time, on November 13, , 2024 at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

2. Location and Work to be Done

The Work consists of installation of a perennial herb and flower garden at 66 Main Street, also known as Main Street Meadow and all work incidental thereto, in accordance with the Scope and conceptual plans attached hereto.

Additional drawings showing details in accordance with which the Work is to be done may be furnished by addendum from time to time during the bidding period by the Owner or its Architect/Engineer, and shall then become a part of the Contract Documents.

The Contractor shall furnish all labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Preparation of Bid

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above. If forwarded by mail, the sealed envelope containing the bid

must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

Bid signatures will be checked.

All addenda will be posted to the city website. All bidders shall include with their bids the written acknowledgment form provided in Section 00300, FORM OF GENERAL BID.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

5. Modification

Any bidder may modify his bid by written communication at any time prior to the scheduled closing time for receipt of bids. Any telegraphic communication must be received by the Owner prior to the closing time, and, provided further, the Owner must be satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. If written confirmation is not received within two days from the closing time, no consideration will be given to a telegraphic communication.

The communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened.

6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The Owner's decision or judgment on these matters will be final, conclusive, and binding.

The Owner may make such investigations as it deems necessary, and the bidder shall furnish to the Owner, under oath if so required, all such information and data for this purpose as the Owner may request.

7. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

8. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other prebid 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 Owner.

Every request for such interpretation should be in writing addressed to Allison Jenkins, Chief Procurement Officer, Allison.jenkins@ci.everett.ma.us and to be given consideration must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective address furnished by them for such purposes), or sent via facsimile or email if time requires. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

9. Security for Faithful Performance

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a payment bond. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner. The bonds shall remain in force for one year after final acceptance of the work by the Owner, unless the Owner, in writing, releases the Contractor from the obligation sooner.

10. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

11. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances or bylaws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the Contract the same as though written out in full.

12. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bond required within 10 days after presentation thereof by the Owner, shall forfeit to the Owner, as liquidated damages for such failure or refusal.

13. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

14. Information Not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents. It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner or the Architect/Engineer, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

15. Right to Reject Bid

The Owner reserves the right to waive any informalities in bids and to reject any and all bids, should the Owner deem it to be in the public interest to do so.

The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

16. Time for Completion

The successful general bidder must agree to commence work within ten (10) days of the date of the Notice to Proceed and to fully complete the project within the time limit stated in Section 00300, FORM OF GENERAL BID.

17. Comparison of Bids

Bids will be compared on the basis of prices set forth in the bid forms. In the event that there is a discrepancy between the lump sum or unit prices written in words and figures, the prices written in words will govern.

18. Award of Contract

The Contract will be awarded to "the lowest responsible and eligible bidder" pursuant to General Laws Chapter 30, Section 39M, as amended. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

19. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of Massachusetts General Laws Chapter 30, Section 39M, as amended, need not be accepted and the Owner may reject every such bid.

20. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of Department of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the bidder, before bid opening, to request any additional information on Prevailing Wage Rates for those tradespeople who may be employed for the proposed work under this contract.

21. Contractor Records

The Contractor shall comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39R concerning Contractor records.

22. INSURANCE

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in Agreement and in such form as shall protect him performing work covered by this Contract, and the City of Everett and its employees, agents and officials, from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The City shall be named as an additional insured. The Contractor covenants and agrees to

hold the City and its employees, agents and officials harmless from loss or damage due to claims for bodily injury or death and/or property damage arising from, or in connection with, operations under this Contract.

23. PROJECT MANAGER

The Owner may utilize the services of a project manager, whose duties shall be as set forth in an Agreement for Project Manager Services.

SECTION 00300

FORM OF GENERAL BID

Bid of _____ (hereinafter called "Bidder")*

() a corporation, organized and existing under the laws of the state of _____

() a partnership

() a joint venture

() an individual
doing business as _____

To the City of Everett, Massachusetts (hereinafter called "Owner").

A) The undersigned Bidder, in compliance with your invitation for bids for the project known as **25-19 Installation of a Perennial Herb and Flower Garden Project**, having examined the plans and specifications and related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the contract documents and the plans and specifications within the time set forth below, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

B) Bidder acknowledges receipt of and this bid includes the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

C) The Bidder agrees to perform the bid work described in the specifications and shown on the plans for the following contract price: \$ _____.

Written Price

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including General Laws Chapter 149 and Chapter 30, Section 39M, as amended.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Agreement set forth in Section 00500 CONTRACT.

The selected Contractor shall furnish a payment bond in an amount at least equal to fifty percent (50%) of the contract price in accordance with Section Section 00620 PAYMENT BOND, and as stipulated in the contract.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for ____ years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals, are as follows:

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the Owner to judge his experience, skill and business standing (add supplementary page if necessary).

<u>Completion Date</u>	<u>Project Name</u>	<u>Contract Amount</u>	<u>Design Engineer</u>	<u>Reference Name</u>	<u>Telephone No.</u>
----------------------------	-------------------------	----------------------------	----------------------------	---------------------------	--------------------------

a. _____

b. _____

c. _____

d. _____

e. _____

f. _____

Bank reference _____
(Name)

(Bank)

(Address)

(Telephone No.)

Pursuant to G.L. c.62C, §49A, I certify hereby in writing, under penalties of perjury, that the within named Bidder/Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

The undersigned Bidder hereby certifies under penalties of perjury, as follows: (1) that he/she 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 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.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

The undersigned bidder hereby certifies, under pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the contractor, to pay laborers employed on the project the said applicable prevailing wage rates.

Respectfully submitted:

Date: _____

By: _____
(Signature)

(Type Name of Bidder)

(Title)

(Business Address)

(City and State)

(Telephone Number)

SECTION 00500

AGREEMENT

THIS AGREEMENT made this _____ day of _____
in the year Two Thousand and Four, between _____, with a
usual place of business at _____, hereinafter
called the CONTRACTOR, and the City of Everett, acting by its Mayor, with a usual place of
business at 484 Broadway, Everett, MA 02149, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the 25-19 Installation of a Perennial Herb and Flower Garden Project, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of _____.

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before _____.

A. Definition of Term: The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.

B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is

allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
- D. Liquidated Damages: It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be _____ per day.

4. Performance of the Work

- A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.

- C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.
- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals:
- (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings,

Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

(2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.

J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There ___ is ___ is not a project architect-engineer for this project who is _____ . Except as otherwise indicated in the Contract Documents, the Architect/Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the City with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have fifteen (15) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
 - 1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
 - 2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
 - 3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.

- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
 2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
- (a) Unit bid prices previously approved.
 - (b) An agreed lump sum.

- (c) The actual cost of:
 - (1) Labor.
 - (2) Materials entering permanently into the work.
 - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
 - (4) Power and consumable supplies for the operation of power equipment.
 - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the City on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the City or otherwise, except as and to the extent expressly provided under G.L. c.30, §39O in the case of written orders by the City. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

- Invitation to Bid
- Instructions to Bidders
- This Contract Form
- Bid Form
- Labor & Materials Payment Bond

Non-Collusion Certificate
Tax Compliance Certificate
Clerk's Certificate of Corporate Vote
Certificate of Insurance
General Conditions
Supplementary General Conditions
General Requirements
Specifications and Addenda
Contract Drawings
Schedule of Prevailing Wages

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- .1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- .7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as Specified in the Supplemental Conditions.

Except for Workmen's Compensation, all liability coverage shall name the City as an additional insured and shall provide for 30 days prior written notice to the City of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. Royalties and Patents: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the

design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.

- B. Assignment: The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

[Remainder of page intentionally blank.]

AGREED:

CITY OF EVERETT, MASSACHUSETTS

CONSULTANT:

Date Signed

CITY OF EVERETT, MA:

Matt Lattanzi
Director of Planning

Date Signed

Allison Jenkins
Chief Procurement Officer

Date Signed

In accordance with G.L. c.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefor and that the _____ has been authorized to execute the contract and approve all requisitions and change orders.

Eric Demas
City Auditor/Chief Financial Officer

Date Signed

Approved as to form

Colleen Mejia, Esq.
City Solicitor

Date Signed

Carlo DeMaria

Date Signed

CERTIFICATE OF VOTE
(to be filed if Contractor is a Corporation)

I, _____, hereby certify that I am the duly qualified
(Secretary of the Corporation)

and acting Secretary of _____ and I further certify that a meeting of the
(Name of Corporation)
Directors of said Company, duly called and held on _____, at which
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

**CERTIFICATIONS REQUIRED BY LAW
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must COMPLETE and SIGN the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

PUBLIC CONTRACTOR DEBARMENT

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

OSHA TRAINING

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor 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) 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 they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract 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.

COMPLETE AND SIGN BELOW:

Authorized Person's Signature

Date

Print Name & Title of Signatory

Name of Contractor

SECTION 00620

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____

_____ a _____
(Name of Contractor) (Corporation, Partnership, Joint Venture or Individual)

hereinafter called "Principal" and _____ of _____,
(Surety)

State of _____ hereinafter called the "Surety" and licensed by the State
(City and State)

Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the City/City of _____, Massachusetts, hereinafter called "Owner", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, for the construction described as follows:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in ____ () counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20__.

ATTEST:

_____		_____
		Surety
_____	By	_____
		(Attorney-in-Fact)

		(Address-Zip Code)
_____	(SEAL)	
Witness as to Surety		

(Address-Zip Code)		

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

SECTION 00800

SUPPLEMENTAL CONDITIONS

	<u>Page</u>
1. Introduction	2
2. Prevailing Wage Rates	2
3. Insurance Requirements	2

SECTION 00850 - Incorporation of Applicable Provisions of the Massachusetts General Laws

§ SC 1.1 INTRODUCTION

The following provisions modify, change, delete from or add to Section 00500 Agreement. Where any Subsection of the Agreement is modified or any Article Paragraph, Subparagraph or Clause thereof is modified or deleted by these Supplemental Conditions, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

§ SC 2.1 PREVAILING WAGE

In accordance with General Laws Chapter 149, Section 26 through 27D, the Contractor is obligated to comply with the prevailing wage rates established by the Commissioner of the Department of Labor and Workforce Development for mechanics, apprentices, chauffeurs, teamsters and laborers employed on the Project. The schedule of applicable prevailing wage rates for the Project, together with a Certificate of Compliance therewith, are set forth in Attachment A herein.

§ SC 3.1 CONTRACTOR'S LIABILITY INSURANCE

In no case shall the limits of liability be less than the following:

- 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. **Umbrella Liability** coverage following form of underlying General, Automobile and Employers' Liability Coverage: Minimum of \$5,000,000 C.S.L. over primary insurance. No more than \$10,000 Retention. The City shall be named as an "Additional Insured."
- d. **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.

SECTION 00850

Incorporation of Applicable Provisions of the Massachusetts General Laws

Certain provisions of the Massachusetts General Laws are applicable to Construction contracts including, but not limited to, those contained in Chapter 30 and Chapter 149. All applicable provisions of the Massachusetts General Laws are incorporated into the Contract as if fully set forth herein, and shall prevail over any conflicting provisions of the General or Supplemental General Conditions.

SECTION 00900

SPECIFICATIONS

The City will purchase and coordinate delivery of all mulch, top soil, woodchips, and soil amendments specified in the soil remediation plan described below. The contractor is responsible for procurement of all plants, and labor for earthworks and planting.

PROTECTION OF UNDERGROUND FACILITIES

The Contractor shall notify Massachusetts DIG SAFE and procure a Dig Safe Number for the project prior to disturbing existing ground in any way. The telephone number of the Dig Safe Call Center is 811 or 1-888-344-7233. The contractor shall dig to ensure that there is no damage to existing structures, drainage lines, etcetera, will occur.

ACCESS TO SITE

All access to the project site shall be from Main Street Extension (City of Everett roadway) on the west side of the project site. This includes all construction deliveries and staging. No work shall impact the Main Street mainline or MassDOT owned roadway.

SOIL REMEDIATION

The City will purchase and coordinate delivery of all mulch, top soil, woodchips, and soil amendments specified in the soil remediation described below.

DESCRIPTION: This work shall consist of amending the soil on site in order to create a healthier soil biome for the effective and safe cultivation of native and edible plant species. The process of remediation will be in accordance with the specifications detailed in the Comprehensive Soil Plan provided by the Contractor.

MATERIALS: The Contractor shall be responsible for the planning and implementation of soil remediation. The contractor shall comply with the following criteria.

- a) Dig topsoil 6" Deep: This will break up near surface compaction, remove unwanted weed species and their seed bank.
- b) Use a 3' drill bit to drill holes across the site. Deep drilled holes permit aeration and allow new soil amendments to penetrate more easily.
- c) Lay down 3" layer of carbon (wood chips/cardboard): Starting with carbon heavy material is ideal for promoting fungal communities. It also creates a soil texture with better water infiltration and aeration to avoid anaerobic pathogens.
- d) Treat carbon layer with Biocomplete Liquid Amendment or product of comparable microbial biodiversity provided by the City: The carbon layer is the food and the liquid amendment delivers the desired populations to their food.

e) Cover carbon layer with 3” of soil mixed with a fungal dominant compost blend: Soil and compost are mixed to become the medium for planting seeds, starts, and saplings. This layer also protects the nascent fungal communities.

f) Seed with fast growing short cover crop and early successional plants.

g) Mulch with straw.

h) Apply additional soil drench of Bio