INVITATION FOR BID
CITY OF NEW BEDFORD
Department of Public Works
New Bedford, Massachusetts

Planting of Trees
IFB # 19434051

March 25, 2019

Jonathan F. Mitchell
Mayor

New Bedford Department of Public Infrastructure
1105 Shawmut Ave.
New Bedford, MA 02746
PROCUREMENT CALENDAR

Bids Available: Monday, March 25, 2019
Questions Due: Monday, April 8, 2019 by 4:00 pm
Questions Answered: Friday, April 12, 2019
Bids Due: Monday, April 22, 2019 at 11:00 am
INVITATION FOR BID _#19434051

The City of New Bedford, Purchasing Department, in conjunction with the Department of Public Infrastructure is soliciting bids for an Arborist for the purpose of planting trees. It is estimated that 350 trees will be planted.

Sealed bids will be received by the Purchasing Department, in the Office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, during business hours, until the date and time of the bid opening.

BID OPENING

Bids will be opened Monday, April 22, 2019 at 11:00 A.M. Prevailing Time

Contract Documents, including the Information for Bidders, Form of Bid, Form of Contract, Specifications, and other Contract Documents, may be obtained and/or examined on or after Monday, March 25, 2019, in the office of City of New Bedford, Purchasing Department, 133 William Street, Room 208, New Bedford, MA 02740 Monday thru Friday – 8:30 AM – 4:00 PM. Electronic copies can be obtained by emailing purchasing@newbedford-ma.gov.

Attention is called to the fact that supplies furnished as part of this Contract are exempt from the Sales and Use Tax. All bids submitted should take this factor into consideration and be calculated accordingly.

The contract will be awarded within thirty (30) days after the bid opening. The time for award may be extended by mutual agreement between the City and the awarded bidder.

No Bidder may withdraw his/her bid for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

The Bidder must furnish a Non-Collusion Form and Statement of Taxes, with their bid.

Bids must include ALL DOCUMENTS required by the Invitation for Bid. The Awarding Authority reserves the right to waive any informality, reject any or all Bids, or accept other than the highest priced Bid.

AWARDING AUTHORITY
CITY OF NEW BEDFORD
Susan Bruce, Director of Purchasing
CITY OF NEW BEDFORD
MASSACHUSETTS

INVITATION FOR BID #19434051

PLANTING OF TREES

I. General Information and Bid Submission Requirements
The City of New Bedford, through the City of New Bedford Department of Public Infrastructure is soliciting bids for an Arborist for the purpose of planting trees. It is estimated that 350 trees will be planted.

SPECIFICATIONS: ATTACHMENT A

Sealed bids will be received by the Purchasing Department, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, during business hours, until the date and time of the bid opening.

BID OPENING

BIDS will be opened:
Monday, April 22, 2019
11:00 A.M. Prevailing Time

• TIME FOR BID ACCEPTANCE
The contract will be awarded within thirty (30) days after the bid opening. The time for award may be extended by mutual agreement between the City and the awarded vendor.

• ADDENDA
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.

• QUESTIONS
Questions concerning this Invitation for Bid must be submitted via email to: Susan Bruce, Director of Purchasing, at susan.brucenewbedford-ma.gov before 4:00 p.m. on Monday, April 8, 2019 by 4:00 p.m. Written responses will be emailed via an Addendum to all bidders on record as having picked up the IFB no later than Friday, April 12, 2019.

• CORRECTIONS, MODIFICATIONS
A bidder may correct, modify, or withdraw a bid by written notice received by the City, prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope, clearly labeled “Modification No. ___. “ Each modification must be numbered in sequence and must reference the original IFB. 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 will 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 correct 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 document, but the intended correct bid is not similarly evident.

• RIGHT TO CANCEL OR REJECT
The City may cancel this IFB or reject in whole or in part any and all bids, if the City determines that cancellation or rejection serves the best interests of the City.

• BID PRICES
All bid prices submitted in response to this IFB must remain firm for thirty (30) days following the bid opening.

Bidders are advised to include in their Bid any and all costs associated with the delivery of all products under this Contract. The City will not pay any additional fees under the Contract unless it has previously agreed to pay such additional fees in writing.
The City will not compensate Bidder for any costs under any Contract awarded by this IFB that are not specifically identified in the Bidder’s Response or Bid and accepted by the City as part of the Contract.

- **UNEXPECTED CLOSURE**
  If, at the time of the scheduled bid opening, City Hall is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 3:00pm on the next normal business day. Bids will be accepted until that date and time.

- **NUMBER OF COPIES**
  Each bidder should submit one (1) original bid document.

- **ENVELOPE MARKING**
  The bid envelope should be marked as follows: Bid #19434051 Tree Planting

- **AUTHORIZED SIGNATORY**
  A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

The City of New Bedford requires all corporate vendors soliciting business with the City of New Bedford which are not Massachusetts Corporations to be registered as a Foreign Corporation in the Commonwealth of Massachusetts. Therefore, “out of state businesses”, in accord with Massachusetts General Laws Chapter 156d, Section 15.01, must register as a foreign corporation doing business in Massachusetts and appoint a Resident Agent for service of process within the State of Massachusetts. The necessary forms may be downloaded from the state web site [www.state.ma.us/sec](http://www.state.ma.us/sec).

No Bidder may withdraw his/her bid for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, after the actual date of the opening thereof.

- **USE OF OTHER NAMES AND REFERENCES**
  *Unless otherwise stated, the use of manufacturer’s name and product numbers are for descriptive purposes and establishing general quality levels only. They are not intended to be restrictive but utilized where no other manner of description will suffice. Bidders are required to state exactly what they intend to furnish, otherwise, it is fully understood that they shall furnish all items stated.*

  *The jurisdiction reserves the right to determine whether something is of equal value.*

- **INSURANCE REQUIREMENTS:**
  Vendors doing business with the City of New Bedford are required to provide a copy of their insurance policy, including all endorsements that list the City of New Bedford as an additional insured in the amounts as specified herein. (*some coverages may not be required*)

- **ALTERNATE PRICE**
  If an alternate price is requested and you estimate that there is no change in price for its inclusion, please indicate by writing “no change,” “N/C,” or “0” in the space provided. DO NOT use “N/A” or leave the space blank as these notations may cause your bid to be rejected.

- **ENVIROMENTAL GUIDELINES**
  The City of New Bedford encourages the use of environmentally preferable products and services (EPP’s) whenever possible. Such products or services must perform to satisfactory standards and represent the best value. EPP’s are products or services that help conserve natural resources, reduce waste, promote the use of recycled materials, clean technologies and protect the health of the public and the environment.
• CONTRACT TYPE AND TERM
This is a firm, fixed-price contract.

• RULE FOR AWARD
The contract will be awarded to the responsive and responsible bidder offering the lowest total price for all required products/services.

The City of New Bedford reserves the right to reject any and all bids if it is in the public interest to do so
1. **Scope**

A. The scope of this contract will consist of tree planting on public property. Planting on public property is defined as any tree planted on municipal property, within the roadway, or up to 20 ft. beyond the public way as defined by Massachusetts General Laws Chapter 87, Section 7. Estimated 350 trees to be planted within city.

B. These specifications, including drawings and plant materials lists, apply to those items necessary and incidental to the execution and completion of planting as indicated herein.

C. All labor, supervision, equipment, materials, and supplies necessary for the execution of the work shall be provided for by the Contractor at no additional cost to the Purchaser.

D. Reasonable care shall be exercised during excavation, planting, filling, grading, and cleanup, to features, improvements, structures, and utilities.

E. Unit cost assumes all costs associated with purchase, transport, and planting including furnishing of one 15 gallon tree watering bag per tree.

2. **Applicable Specifications and Standards**


3. **Planting Season**

A. Planting shall be done within the following dates:

   1. Deciduous trees and shrubs April 30th to June 30th.

B. If a special condition exist that warrants a variance in the above planting dates, a written request shall be submitted by the Contractor to the Arborist stating the special conditions and the proposed variance. Permission for the variance will be granted at the discretion of the City.

C. Tree planting projects are anticipated but are contingent on City budget constraints.

4. **Materials**
A. The City has a contract with Central Nurseries for the purchase of trees. The Contractor will not have to provide any trees or plants.

B. Mulching material shall consist of only black mulch used around trees and shall be free of material injurious to plant growth.

C. Water shall be provided by the Contractor and be suitable for irrigation during installation and free from ingredients harmful to plant life.

D. Guying and staking materials shall be as follows; stakes shall be 6’ to 8’ long sections of 2”x2” hardwood. Guying materials are limited to the use of a product called “Arbor Lock”, a chain like material that connects to itself from one end of the wooden stake to the trunk of the tree. If unfamiliar with product please research via the internet.

5. Transportation and Storage of Plant Material

A. During transportation of plant material from holding area to the worksite, the Contractor shall exercise care to avoid drying out of tree roots and wind burn to foliage. Should the roots be dried out, large branches broken, balls of earth broken or loosened, or areas of the bark torn, the Arborist may reject the injured tree(s) for planting and order them to be replaced by the contractor at no additional cost to the City of New Bedford.

B. Plants must be protected at all times from the sun or drying winds; Those that cannot be planted immediately on delivery shall be kept in the shade, well protected with soil covered with wood chips or other acceptable material, and kept well watered. Plants shall not remain unplanted any longer than 3 days after delivery without permission from the Purchaser. Plants shall not be bound with wire or rope at any times so as to damage the bark or break branches. Plants shall be lifted and handled with suitable support of the soil ball to avoid damaging it.

6. Excavation of Planting Areas

A. The Arborist will specify all planting areas and will pre-mark planting locations accordingly. Notification to Dig Safe Inc. Hotline and New Bedford Water and Sewer Commission to verify the location of underground utilities before excavation begins will be done by the Arborist as well. The Contractor shall be responsible for all damage resulting from neglect or failure to comply with this requirement.

B. The Contractor shall excavate planting areas as specified by the ANSI A300 (Part 6) Standard. Excavation may be done by shovel or backhoe. The soil pad on which the soil ball or root ball will be placed shall be of undisturbed soil or prepared to prevent settling. The depth of the pad shall correspond to the distance from the bottom of the soil ball to the root collar, or slightly less. The sides of the planting hole shall be sufficiently scarified prior to backfilling to prevent “glazing” of soil walls.

C. Excavated planting holes that will be left open when work is not in progress or pose an immediate and considerable hazard to pedestrians or vehicles shall be adequately barricaded with appropriate warning devices or refilled with original soils.
D. The Contractor shall notify the Arborist of obstructions detrimental to tree growth. Proper water drainage must be assured.

E. Where soil conditions or below ground obstructions which cannot be remedied are encountered, the Arborist shall designate alternate planting locations.

7. Planting Operations

A. Plants must be protected from excessive vibrations. Plants shall not be thrown or bounced off a truck or any other objects while being lowered to the ground. Plants shall not be dragged, lifted or pulled by the trunk or foliage parts in a manner that will loosen the roots in the ball.

B. Plants shall be set with the top of the root collar at or slightly above finished grade. Plants must be centered in the hole and set plumb. Plants shall be set so that they will be at the same depth 1 year after planting.

C. Bare root plants shall have their roots spread into a natural position, free of bunching, kinking or circling. All broken or damaged roots shall be cut back to the point where they are clean and free of rot. No other root pruning shall be done.

D. For plants in plastic, metal or biodegradable containers, the container shall be removed before planting. If roots are crowded or coiled on the bottom, sides, or surface of the root ball, they shall be gently separated from the edges or surface.

E. For all plants moved with a tree spade, all holes and cavities between the ball and the surrounding soil shall be filled. Glazed planting surfaces shall be sufficiently scarified prior to backfilling. The ball shall be thoroughly soaked immediately after planting.

F. After the plant has been set and one third of the backfilling is applied to support the root ball, all ropes, strings, wire baskets, burlap, and other wrappings shall be removed from the tree and planting hole prior to backfilling. If the root collar is deep in the ball, remove excess soil away from the trunk using hands, no tools may be used for this process.

G. Planting holes shall be backfilled with excavated soil. When holes are approximately two-thirds full, they shall be thoroughly watered to eliminate air pockets. After this initial watering, excavated soil shall be installed to the top of the hole and watered. Prevent soil compaction after soil is wet by not walking, placing tools or driving over planting site.

H. Planting areas shall be finish-graded to conform to ANSI A300 (Part 6) after the full settlement has occurred. All plants shall be mulched over the root system with a 2-4 inch layer of aged bark mulch immediately after planting. Mulching material shall be pulled back no less than 3” and no more than 4” from the trunk.

I. Plants shall be thoroughly watered immediately after planting.

J. All twine, rope, transit guards or wrappings, and plant labels secured around the trunk or branches shall be removed after planting is completed.

8. Guying, Staking, and Pruning
A. Only trees so designated by the Arborist shall be staked and guyed. Exceptions should only be made in windy areas, areas where excessive vandalism is expected or where planting large bare root trees in light soil. Arbor Lock material shall be attached directly to the stakes and tree trunk. In no case shall the Arbor Lock be tight around the tree trunk. Arbor Lock should be attached loosely enough to allow a small amount of play in the trunk. For drooping stems, arbor lock shall be placed at the point on the stem at which the top can stand up on its own. Stakes shall be driven outside the root ball. Ground anchors are to be driven at a 45 degree angle in the ground and placed at 120 degree intervals around the trunk. The Arborist shall be responsible for removing all stakes and straps after a one year period. These stakes and straps will become property of the City of New Bedford and should be figured into the bid.

B. Only trees so designated by Arborist shall have approved trunk protection installed. The trunk protection shall be secured at the top and bottom of the trunk in a manner so as not to restrict or damage the bark. The Arborist will be responsible for removing the trunk protection after a one year period.

C. No pruning shall be performed on the crowns of newly installed trees except to remove broken or damaged branches existing at the time of planting.

9. Cleanup

A. Soil, branches, binding and wrapping material, or other debris resulting from any tree planting shall be promptly cleaned up and removed. The work area shall be kept safe and neat at all times until the cleanup operation is completed. Under no circumstances shall the accumulation of soil, branches, or other debris be allowed upon a public property in such a manner as to result in a public hazard.

10. Acceptance

A. The Arborist shall perform an inspection with the Contractor of all plant material after the original planting to note and correct any discrepancies. A complete list will be provided by the contractor and shall include but is not limited to: street address, variety of plant material, caliper size, and planting date for each tree listed. This list shall be submitted in Excel format.

B. Work may be accepted in parts when the Arborist deems that proper planting practices and proper tree species placement is found to be true. Acceptance of work in parts shall not waive any other provision of this contract.

11. Guarantee Period and Replacement

A. The Contractor shall guarantee all plants to be healthy and in flourishing condition for three full years from the date of acceptance. The guarantee does not include vandalism, storm damage, animal damage or mechanical damage unrelated to contractor activities.

B. The Contractor shall remove and replace, without cost, and as soon as weather conditions permit, and within a specified planting period, all plants not in a healthy and flourishing condition as determined by the Arborist any time during the guarantee period. Replacements shall be subject to all requirements stated in this specification.
12. Final Inspection and Acceptance

A. At the end of the guarantee period and upon written request of the Contractor, the Arborist shall inspect all guaranteed work for final acceptance. The request shall be received at least 5 working days before anticipation date for final inspection. Upon completion and re-inspection of all repairs or renewals necessary in the judgment of the Arborist at that time, the Arborist shall certify, in writing, that the project has received final acceptance.

Alternate No. 1

If funding exists, the Purchaser is interested in having the Contractor saw cut both concrete and asphalt sidewalk squares, lifting and bringing the impervious material to 1105 Shawmut Avenue. Please include pricing per cutting.
CITY OF NEW BEDFORD
BID FORM

The undersigned propose to furnish the goods/services required per bid specification to the City of New Bedford for the amount listed below:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PRICE PER SINGLE UNIT INSTALL</th>
</tr>
</thead>
<tbody>
<tr>
<td>CALIPER SIZE – 2.5”</td>
<td></td>
</tr>
<tr>
<td>CALIPER SIZE – 2.75”</td>
<td></td>
</tr>
<tr>
<td>CALIPER SIZE – 3.0”</td>
<td></td>
</tr>
</tbody>
</table>

Alternate No. 1
If funding exists, the Purchaser is interested in having the Contractor saw cut both concrete and asphalt sidewalk squares, lifting and bringing the impervious material to 1105 Shawmut Avenue. Please include pricing per cutting and removal of squares at the sizes of 4ft x 4ft and 4ft x 5ft on the bid sheet.

<table>
<thead>
<tr>
<th>ASPHALT CUT</th>
<th>PRICE PER CUT</th>
</tr>
</thead>
<tbody>
<tr>
<td>4’x4’</td>
<td></td>
</tr>
<tr>
<td>4’x5’</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONCRETE CUT</th>
<th>PRICE PER CUT</th>
</tr>
</thead>
<tbody>
<tr>
<td>4’x4’</td>
<td></td>
</tr>
<tr>
<td>4’x5’</td>
<td></td>
</tr>
</tbody>
</table>

Name of Vendor: ____________________________________________

Address: ___________________________________________________

Tel: ( )

City/State/Zip: ___________________________________________

Fax: ( )

By: _______________________________________________________
    (Type or Print Name of Person Signing Quotation and Title)

Date: ______________________

(Signature)
I HEREBY CERTIFY THAT I HAVE RECEIVED THE FOLLOWING ADDENDUM

ADDENDUM #S

________________________________________
Person submitting bid

________________________________________
Company Name

Please include this form with your bid if applicable.
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under penalties of perjury that this bid 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 individual submitting bid

________________________
Name of business/organization

---

TAX COMPLIANCE CERTIFICATION

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 contractor, and withholding and remitting child support.

________________________
Signature of person submitting bid
CITY OF NEW BEDFORD
MASSACHUSETTS

VOTE OF CORPORATION AUTHORIZING
EXECUTION OF CORPORATE AGREEMENTS

At a meeting of the Board of Directors of _______________ duly called and held on ______________, 20____ at which a quorum was present and acting throughout, the following vote was duly adopted.

VOTED: That ________________, the ________________ of the corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name and behalf of the corporation contract documents with the City of New Bedford, the above mentioned documents to include but not be limited to Bids, Bids, Deeds, Purchase and Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and also to seal and execute, as above, surety company bonds to secure bids and Bids and the performance of said contract and payment for labor and materials, all in such form and on such terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy

ATTEST:

______________________________ (Affix Corporate Seal)

Name (printed)  Signature

______________________________  ____________________
Title  Date
CONTRACTOR CERTIFICATION

As evidenced by the signature of the Contractor’s Authorized signatory below, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of any City contract; that pursuant to federal and state requirements, the Contractor shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

__________________________________________
Contractor Authorized Signature

__________________________________________
Printed Name

____________________________
Date

Title_________________________ Telephone:_________________________

Fax:_________________________ Email:_________________________
Withdraw, Modify and Amend Bids

Bidders who wish to withdraw, modify or amend their Bid must do so in writing utilizing electronic mail to the City of New Bedford Director of Purchasing at susan.brice@newbedford-ma.gov no later than the time and date set forth herein for the receipt of the Bids. All such withdrawals, modifications, or amendments must so state in the subject line of the email correspondence. Any withdrawal, modification or amendment arriving after the date and time set forth for accepting responses will not be considered. After the opening of the Bids, a Bidders may not change any provision of the Bid in a manner prejudicial to the interests of the City of New Bedford or fair competition. Minor informalities will be waived at the discretion of the City of New Bedford.

Familiarity with Requirements

Bidders are to thoroughly familiarize themselves with the requirements of the Invitation for Bids. Ignorance of the requirements will not relieve the Bidders from any obligations or liabilities of any contract(s) issued as a result of this Invitation for Bids.

Independent Party

Under this Invitation for Bids, the successful Bidders declares itself to be at all times acting and performing as an independent party and nothing in this Invitation for Bids or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Bidder and the City of New Bedford.

Conflict of Interest

No officer or employee of the City of New Bedford shall participate in any decision relating to any contract which would affect their financial or personal interest or the interest of any corporation, partnership, sole proprietorship or association in which they are directly or indirectly interested.

Political Activity Prohibited

None of the services to be provided by any Bidder shall be used for any partisan political activity or to further the election of any candidate for public office.

Assignment by Contractor

The successful Bidder or Contractor shall not assign in whole or in part or otherwise transfer any interest in any contract without the written consent of the City of New Bedford, provided however, that the present and prospective claims for money due owing to the Contractor from the City of New Bedford or any other Buyer may be assigned to a bank or trust company or to a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) without such consent so long as notice of such assignment is promptly furnished to the City of New Bedford. Any complete or partial assignment of the Contractor’s or successful Bidder’s interest in any such contract shall require the assignee at the City of New Bedford’s discretion, to supply such further information as the City of New Bedford deems necessary to comply with the City of New Bedford’s rules and regulations governing contracts for services. Any such assignment, in whole or in part, shall also be expressly made subject to all defenses, set-offs or counter claims which would have been made available to the City of New Bedford against the successful Bidder in the absence of such assignment.
Subcontracting

None of the services to be provided by the contractor pursuant to any contract shall be subcontracted or delegated in whole or in part to any organization, association, individual, corporation, partnership or any other such entity without the prior written approval of the City of New Bedford. All intended subcontracts shall be provisions, which are functionally identical to and consistent with the language of this Invitation for Bids.

Choice of Law

Any contracts awarded as a result of this Invitation for Bids shall be construed under the laws of the Commonwealth of Massachusetts. The successful Bidder and agents thereof agree to bring any federal or state legal proceedings arising from any such contract in which the City of New Bedford is a party in a court of competent jurisdiction, within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights any party may have to intervene in any action in any court or wherever pending in which the other is a party.

Notices

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when sent via electronic mail (e-mail), given in person to either party or deposited in the U.S. Mail, postage prepaid and addressed to the persons indicated in any contract or as specified by any amendment hereto.

Severable Sections Do Not Affect Entire Contract

If any provision of the Invitation for Bids or any subsequent contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under the provision. The remainder of the Invitation for Bids and any subsequent contract shall remain in full force and effect and enforceable to the fullest extent provided by law.

Contract Performance

The failure of any party to insist in any one or more situations, upon performance of any of the terms or provisions of any part of this Invitation for Bids or resulting contract shall not be considered as a waiver or relinquishment of the right of either party to future performance of any such term or provision, and are the rights and obligations of the parties to such future performance shall continue in full force and effect.

Liquidated Damages for Failure to Enter into a Contract

The successful Bidder, upon its failure or refusal to execute and deliver the contract, bonds and certificates of insurance required within seven days after receipt of the Notice of Award of the Bid, shall forfeit to the City of New Bedford, as liquidated damages for such failure or refusal, the security deposited with its Bid, provided that the amount forfeited shall not exceed the difference between its Bid price and the Bid price of the next lowest, responsive and responsible Bidder. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the Bidder, its Bid deposit shall be returned.

Liquidated Damages for Failure to Perform Under the Terms of the Contract

Should the successful Bidder fail to commence or diligently perform according to the terms if the contract, the successful Bidder agrees to pay the City of New Bedford, as liquidated damages, Two Hundred Fifty Dollars ($250.00) per calendar day that the successful Bidder fails to commence or diligently perform the work in
accordance with the contract documents and/or is in violation of the contract. Liquidated damages assessed under this provision shall be deducted from any payment(s) due to the successful Bidder.

**Funding & Fiscal Year Appropriation**

Appropriations for expenditures by the City of New Bedford, and authorizations to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year for the City of New Bedford begins on July 1st and ends on June 30th of the following year. The obligations of the City of New Bedford under any contract resulting from this Invitation for Bids for any subsequent fiscal year following the fiscal year in which the initial contract is awarded, is subject to the appropriations to the City of New Bedford. Expenditures for contracted services, which will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated and authorized for the said fiscal year.

**Procurement Calendar**

The City of New Bedford is soliciting Bids that will result in a contract. The schedule of events for this solicitation, subject to amendment by the City of New Bedford is:

- **Bid Documents Available:**
  - Monday, March 25, 2019
- **Questions Due:**
  - Monday, April 8, 2019 by 4:00 pm
- **Questions Answered:**
  - Friday, April 12, 2019 at 1:00 pm
- **Bids Due:**
  - Monday, April 22, 2019 at 11:00 am

**Duration of Contract**

The awarded contract will expire June 30, 2019.
GENERAL BID INFORMATION

Required IFB Sections

The Bidder must provide in its Bid, a reply to the particular specifications included in the Invitation for Bids.

ADA, Regulatory, Compliance and Standards

Bidder are expected to provide services and commodities that are in compliance with Section 504 of the Federal Rehabilitation Act of 1973, the American with Disabilities Act 1990, the Telecommunications Act of 1996, and all successor federal and related legislation throughout the term of any contract resulting from this solicitation.

Indemnification

Any successful Bidder, in exchange for entering into an agreement or contract resulting from this Invitation for Bids shall indemnify and hold harmless the City of New Bedford and all persons acting for or on behalf of either of them from all suits and claims against them, or either of them arising for or on occasioned by the use of any service, material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such service, material, equipment or apparatus, or any part thereof, in any suit is held to constitute infringement, the successful Bidder within a reasonable time will, at its expense, and as the City of New Bedford may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus or remove the material, equipment or apparatus and refund the amounts paid therefore. Said indemnification includes reasonable Attorney’s fees related hereto. Furthermore, any successful Bidder in exchange for entering into any agreement or contract resulting from this Invitation for Bids agrees to indemnify and hold harmless, release and forever discharge the City of New Bedford as well as their officers, agents and employees as well as their successors and assigns from any and all manner of actions, suits, claims, demands, judgments, damages and liability in law and equity which may arise or result from performance under this contract. This includes discrimination, labor or employment claims against the successful Bidder and the City of New Bedford and any and all manners of legal action brought against the successful Bidder and/or the City of New Bedford. Said indemnification includes reasonable attorney’s fees related thereto.

Federal, State and Local Laws

The successful Bidder will comply with all applicable Federal, State and Local laws and regulations.

Tax Exempt

Purchases made by municipalities and government are exempt from Federal Excise Taxes and Massachusetts State Sales Taxes and Bid prices must show exclusion of such taxes. Tax exemption certificates will be furnished as required.

Confidentiality

The successful Bidder acknowledges that in performance of any contract resulting from the Invitation for Bids it may require or have access to “personal data” and become a “holder” of personal data as defined by M.G.L. c. 66A. The successful Bidder shall comply with all laws and regulations relating to confidentiality and privacy, including but not limited to any rules and regulations of the City of New Bedford. The Successful Bidder shall at times recognize the City of New Bedford’s ownership of personal data and the
exclusive right and jurisdiction of the City, and “data subjects” (as defined in Chapter 66A) to control the use of personal data. The successful Bidder shall immediately notify the City of New Bedford both orally and in writing if any personal data in its possession is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the City of New Bedford. The successful Bidder shall cooperate with the City of New Bedford in taking all steps it deems advisable to enjoin, misuse, regain possession and/or otherwise protect the City of New Bedford’s rights and data subject’s privacy. The successful Bidder shall allow access to any personal data held in their possession solely to those employees of the City of New Bedford who require such information in the performance of their occupational responsibilities. All personal data held by the successful Bidder shall be delivered to the City of New Bedford within 14 calendar days after termination of any contract resulting from this Invitation for Bids. The successful Bidder agrees to take reasonable steps to ensure the physical security of such data under its control, including but not limited to, fire protection, protection against smoke and water damage, alarm system, locked removal of manually held data, passwords, access logs, badges or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data, limited terminal access, access to input documents and design provisions to limit use of personal data. The successful Bidder agrees that it will inform each of its employees having any involvement with their personal data or confidentiality. The City of New Bedford shall have access to all times to any data maintained pursuant to any contract resulting from this Invitation for Bids, without the consent of the data subject. The successful Bidder shall use personal data and material derived from such data, only as necessary to the performance of the subject contract. Failure of the successful Bidder to comply with the requirements of this section may be grounds for terminating any contract resulting from this Invitation for Bids.

**Force Majeure**

Neither the City of New Bedford, nor the successful Bidder shall be liable to the other, nor deemed to be in breach of any contract resulting from this Invitation for Bids for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to, Acts of God or the public enemy, wars, fires, flood, epidemics, quarantine restrictions, strikes, unforeseen freight embargos or unusually severe weather. Dates and times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other party promptly of the existence and nature of such a delay. It is agreed that since the performance dates of the subject contract are of the essence and important to the implementation of essential City of New Bedford work, continued failure to perform for periods aggregating 45 or more calendar days, even for causes beyond the control of the successful Bidder, shall afford the City of New Bedford the right to terminate any contract resulting from this Invitation for Bids without assessment of termination costs or penalties.

**Equal Opportunity**

During the performance of this contract, the successful Bidder agrees as follows:

a. The successful Bidder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, asexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry. The successful Bidder will take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, genetic information or ancestry.
b. The successful Bidder will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and all of the rules, regulations and relevant orders of the Secretary of Labor.

**Termination**

The Bidder for this Invitation for Bids should note that the City of New Bedford reserves the right to terminate any contracts resulting from this Invitation for Bids in whole or in part, by written notice:

- **Without Cause:** Either party may terminate the subject contract by giving written notice to the other party at least 60 calendar days prior to the normal contractual effective date of termination as stated or such other period as is mutually agreed upon in advance by the parties.

- **For Cause:** If, in the opinion of the City of New Bedford, the successful Bidder fails to fulfill its obligations, the Town of New Bedford may terminate any contract resulting from this Invitation for Bids by giving 30 days written notice to the successful Bidder at any time. The subject contract shall be terminated immediately in the event of fraud or program abuse.

- **Emergency:** The City of New Bedford may terminate or suspend any contract resulting from this Invitation for Bids up to 60 calendar days by providing written notice to the successful Bidder, stating the grounds for the City of New Bedford’s action, in the form of U.S. Mail, hand carried letter, or other appropriate written means if the City of New Bedford determines that immediate action is necessary to protect the City, State and/or Federal funds or property, or to protect persons from injury. Such termination or suspension shall be effective upon receipt of notice of either suspension or termination by the successful Bidder. In the case of a suspension under this paragraph, the Notice of Suspension shall be accompanied by instructions from the City of New Bedford specifying requisite actions by the successful Bidder to remove the suspension, proposed timetable for meeting those requirements and a description by the City of New Bedford of allowable activities and costs, if any, during the suspension period. Failure by the successful Bidder to remedy the stated deficiencies according to the timetable prescribes by the City of New Bedford shall be cause for immediate termination.

- **Elimination or Reduction of Funding:** In the event of a reduction of funding for any reason, the City of New Bedford may terminate any contract resulting from this Invitation for Bids by providing notice of termination in a reasonable time. The City of New Bedford may provide a conditional notice of termination with a proposed amendment to the subject contract. Any such notice shall provide that the subject contract will terminate unless the successful Bidder submits to the City of New Bedford a properly signed copy of the amendment, or such modification form of amendment as may be agreeable to the City of New Bedford, within 20 calendar days after the date of the conditional Notice of Termination, or such other time as it is otherwise specified in the Conditional Notice.

- **Remedies Upon Termination for Cause or for Emergencies:** Notwithstanding the terms contained in this section, in the event of termination, the successful Bidder shall not be relieved of liability to the City of New Bedford by virtue of any breach of contract resulting from this Invitation for Bids by the successful Bidder. In the event of termination pursuant to this section, the City of New Bedford may withhold any payments to the successful Bidder for the purpose of set off until such time as the exact amount of damages due to the City of New Bedford from the successful Bidder is determined. In addition to and notwithstanding the
above, the successful Bidder covenants and agrees that in the event of termination of any contract resulting from this Invitation for Bids, the successful Bidder shall pay to the City of New Bedford as damages: (a) such sum as, at the time of termination, the City of New Bedford reasonably determines that it shall require to compensate a subsequent contractor to complete the delivery of service, and (b) the sum, reasonably determined by the City of New Bedford, which will compensate the City of New Bedford for all of the direct and indirect costs resulting from the delay of services upon the successful Bidder default. The successful Bidder further covenants and agrees with the City of New Bedford that the successful Bidder shall pay all of the City of New Bedford’s costs and expenses (including Attorney’s Fees) incurred or paid in obtaining and enforcing any court order favorable to the City of New Bedford for any obligation of the successful Bidder under any contract resulting from this Invitation for Bids.

Obligation in the Event of Termination

Upon termination of any contract resulting from this Invitation for Bids, all documents finished or unfinished, data, studies and reports prepared by the successful Bidder pursuant to the subject contract shall become the property of the City of New Bedford. Copies of finished and unfinished documents, data, studies and reports generated as a necessary part of performing the subject contract shall be delivered to the City of New Bedford upon reasonable request and shall be retained by the successful Bidder for future use. The City of New Bedford shall promptly pay the successful Bidder for all services performed and for all costs and un-cancelable commitments reasonably incurred in performance of the subject contract to the effective date of termination, provided the successful Bidder is not in default of the terms of the subject contract and submits to the City of New Bedford properly completed invoices with supporting documentation covering services no later than 45 days after the effective date of termination, and that the successful Bidder makes every reasonable effort to minimize or reduce costs incurred.

Ownership of Furnishings & Equipment

Unless otherwise provided by law or a federal grant award, title to all furnishings and equipment provided by the City of New Bedford or that the awarded Bidder provides under the terms of this Invitation for Bids and paid with public funds, shall vest in and be retained by the City of New Bedford. Upon completion of performance of the awarded Bidder’s contract, the awarded Bidder shall return such furnishings and equipment in its possession in the same condition as at the commencement of any contract resulting from this Request for Bid, normal wear and tear excepted.

Anti-Boycott Warranty

During the term of any contract resulting from this Invitation for Bids, neither the successful Bidder nor any “affiliated company” as hereafter described, shall participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage in conduct declared to be unlawful by Sections 2 and 4 of Chapter 151E of the Massachusetts General Laws. As used herein, an “affiliated company” shall be any business entity or which at least 51% of the ownership interests are directly or indirectly owned by the successful Bidder or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful Bidder.
Bid Information

Bidder Communication

Bidder are prohibited from communicating directly with any employee of the City of New Bedford except as specified in this Invitation for Bids, and no other individual City of New Bedford employee or representative is authorized to provide any information or respond to any questions or inquiries concerning this Invitation for Bids. Bidder may contact the person identified on the cover sheet of this Invitation for Bids in the event this Invitation for Bids is incomplete.

Reasonable Accommodation

Bidder with disabilities or hardships that seek reasonable accommodation, which may include receipt of the Invitation for Bids information in an alternative format, must communicate such requests in writing via electronic mail (e-mail) to the contact person. Requests for accommodation will be addressed on a case by case basis. A Bidder requesting accommodation must submit the written request via email, which describes the Bidder disability and the requested accommodation to the contact person for the Invitation for Bids. The City of New Bedford reserves the right to reject unreasonable requests.

Public Records

All Bids and information submitted in response to this Invitation for Bids are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, Section 10 and Chapter 4, Section 7, Subsection 26. Any statements in the Bidder Bid inconsistent with these statutes will be disregarded.

Brand Name or Equal

Unless otherwise specified in this Invitation for Bids, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Invitation for Bids to any manufacturer or proprietor or to constitute and endorsement of any good or service, and the City of New Bedford must consider clearly identified offers as substantially equivalent goods and services are submitted in response to such reference.

Publicity

Any Bidder awarded a contract under this Invitation for Bids is prohibited from selling or distributing any information collected or derived from the contract, including lists or participating or eligible departments, employee names, telephone numbers, e-mail addresses, addresses or any other reports or information except as specifically authorized under this contract.

Costs

Costs for services that are not specifically identified in the Bidder response and identified as part of the contract will not be compensated under any contract awarded pursuant to this Request for Bid.

Required Response Attachments

All Bidder are required to complete, sign and return at a minimum the following documents:
Certificate of Non-Collusion: By signing the attached Certificate of Non-Collusion, the Bidder is declaring the fact that its response was formulated without collusion with any person, representative, agent, or party submitting a competing response. No response will be accepted without the signed Non-Collusion Statement attached to the original response.

Vote of Corporation (If Bidder is a Corporation): If the Bidder is a Corporation, a vote of the Corporation approving participation in this Request for Bid process must be signed by the Corporate Officers with the Corporate Seal affixed and attached to the original Request for Bid.

If the Bidder is a Corporation, the names and addresses of the Corporate Officers and the State and date on Incorporation must be included. The Bidder must state if the Corporation is publicly or privately held. If the Corporation is publicly held, the exchange on which it is traded and the symbol under which it is traded is required.

Sole Proprietorship (If the Bidder is a Sole Proprietor): If the Bidder is a Sole Proprietorship, a partnership or any other legal business entity, the names and addresses of the Officers must be included, the parent state of business and the number of years this entity has been in business. In short, a complete business profile must be included in the response.

Submitted Bids

The City of New Bedford shall be under no obligation to return any materials submitted by the Bidder in the response to this Invitation for Bids. All materials submitted by Bidder become the property of the City of New Bedford and will not be returned to the Bidder. The City of New Bedford has the right to use any ideas, concepts or configurations that are presented in the Bidder response whether or not the response is selected for contract award.

Clarification of Bid

The City of New Bedford is not required to seek clarification of Bids; therefore the Bidder should be as clear as possible in all of its responses to this Invitation for Bids.

Rejection of Bidder Response

A Bidder response may be rejected by the City of New Bedford if the Bidder response:

- Fails to adhere to one or more of the requirements.
- Fails to submit its response to the required address on or before the Invitation for Bids are due.
- Fails to submit a response in accordance to the format and instructions specified or to supply the minimum information requested in the Invitation for Bids.
- Fails to meet unconditionally or is unable to demonstrate competence to meet the requirements of the Invitation for Bids.
- Misrepresents its equipment, systems or services, or provides demonstrably false information in its response, or fails to provide material information
- Violates the restrictions on contracts with the City of New Bedford employees and representatives
- Refuses, is unable to, or fails to provide clarification requested by the City in a reasonable time frame.
Invitation for Bids Cancellation

The City of New Bedford retains the right to cancel this Invitation for Bids, or any portion thereof, at any time prior to the execution and approval of a contract. If this Invitation for Bids is cancelled, all responses received to the Invitation for Bids will be rejected. All expenses related to the preparation of responses to this Invitation for Bids remain the responsibility of the Bidder.

No Guarantee of Purchase

The City of New Bedford makes no guarantee that any purchases will take place from any contract resulting from this Invitation for Bids, nor does the City of New Bedford guarantee any minimum quantity of purchase from any contract resulting from this Invitation for Bids. Any estimated or past procurement volumes referenced in this Invitation for Bids are included only for the convenience of the Bidder, and not to be relied upon as any indication of future purchases. The Bidder may not place, as a condition for providing the cost levels proposed, any minimum purchase requirements.

Prime Contractors and Subcontractors

Prior approval of the eligible entity is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same State and Federal financial program and reporting requirements and are held to the same reimbursable cost standards as the successful Bidder. The City of New Bedford requires a single point of contact for any contract resulting from this Invitation for Bids. Subcontractors may be used, but the successful Bidder, as a prime contractor, shall be responsible for meeting all of the terms of any contract resulting from this Invitation for Bids, and must be accept full responsibility for any subcontractor’s performance.

Bidder must provide a list of subcontractors, a description of each subcontractor’s responsibility in regards to this contract and signed letter of agreement between the Bidder as the prime contractor, and its subcontractor(s) identifying their responsibilities and their relationship to the prime contractor. The prime contractor must notify each individual account (eligible entity) in writing, the name of their subcontractor both initially and when a subcontractor is charged. If the subcontractor has filed for Chapter 11 Bankruptcy or Chapter 7 Bankruptcy, the prime contractor must notify the City of New Bedford. The notification must be written and must be within one week of the events noted above.

Written Inquires

Bidder may submit written inquiries concerning any part or attachment of this Invitation for Bids. Written inquiries regarding issues outside of the scope of this Invitation for Bids will not be considered. All inquiries must be submitted by the required date and time to the contact listed on the cover page of this Invitation for Bids. All written inquiries must be submitted via electronic mail (e-mail) only. No other manner of submission will be accepted.

Any change to this submission date and/or time will be made by notice sent electronically to all Bidder. The Bidder is responsible for confirming receipt of its written inquiries with Susan Bruce, Director of Purchasing, City of New Bedford at susan.brucenewbedford-ma.gov. The City of New Bedford will provide written responses via electronic mail (e-mail) to all written inquiries received by the required due date. Responses will not identify the inquiry by the Bidder.
Deadline for Submission

All responses to this Invitation for Bids are due at the address listed on the cover page and no later than the date and time listed in the Procurement Calendar.

END OF SECTION
CITY OF NEW BEDFORD, MASSACHUSETTS
Goods and Services Contract

DATE:

This Contract is entered into on, or as of, this date by and between the City of New Bedford, Massachusetts, a municipal corporation, 133 William Street, New Bedford, Bristol County, Massachusetts 02740 (the "City"), and

["Contractor"]

[Address of the Contractor]

[Telephone Number] [FAX Number] [E-Mail Address]

1. This is a Contract for the procurement of the following:

2. The Contract price to be paid to the Contractor by the City is:

3. Payment will be made as follows:

   3.1 Pursuant to invoice in accordance with Article 24 hereof.

   3.2 Fees and Reimbursable Costs combined shall not exceed $_____________ as more fully set forth in the Contractors Response to the Request for Proposals or Invitation for Bids.

   3.3 There shall be no further costs, fees, or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing in an Amendment hereto.

4. Definitions:

   4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the City. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the City to insure that the goods or services are complete and are as specified in the Contract.
4.2 Contract Documents: All documents relative to the Contract including (where used) Requests for Proposals and Invitations for Bids and all attachments thereto, Instructions to Bidders, Proposal Forms, General Conditions, Supplementary General Conditions, General Specifications, other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period, and Contractor’s Response to the Request for Proposals or Invitation for Bids. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The “other party” to any Contract with the City. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by duly executed amendments.

4.5 Goods: Goods, supplies, and all property, other than real property, including equipment, materials, printing, and insurance and further including services incidental to the delivery, conveyance and installation of such property.

4.6 Services: The furnishing of labor, time, or effort by a Contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

4.7 Subcontractor: Those having a direct contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of the work, but does not include one who merely furnishes material not so worked.

4.8 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before ________________, unless extended, in writing, at the sole discretion of the City, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the City Auditor. Time is of the essence for the completion of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the City is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the City Auditor. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the City.

7. Permits and Approvals:

Permits, licenses, approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.
8. **Termination and Default:**

8.1 **Without Cause.** The City may terminate this Contract on seven (7) calendar days notice when in the City’s sole discretion it determines it is in the best interests of the City to do so, by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

8.2 **For Cause.** If the Contractor is determined by the City to be in default of any term or condition of this Contract, the City may terminate the Contract on seven (7) days notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

8.3 **Default.** The following shall constitute events of a default under the Contract:

1) any material misrepresentation made by the Contractor to the City; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor’s reasonable control; (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor’s reasonable control; (iii) failure to perform this Contract in a manner reasonably satisfactory to the City; (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the City as unsatisfactory, or erroneous; (v) discontinuance of the services for reasons not beyond the Contractor’s reasonable control; (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination; (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract; and (viii) failure to comply with any and all requirements of federal or state law and/or regulation or City Ordinance and/or regulations.

9. **Suspension or Delay:**

The City may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the performance of this Contract without cause for such period of time as the City may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor’s compensation shall be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the performance of this Contract, or if another provision of this Contract is applied to render an equitable adjustment.

10. **The Contractor’s Breach and the City’s Remedies:**

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of the Contract, and the City of New Bedford shall have all the rights and remedies provided in the Contract documents, including, without limitation, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including but not limited to monetary damages, costs, attorney’s fees or other damages resulting from said breach, as well as specific performance of this Contract, and the right to select among the remedies available to it by virtue of all of the above.

From any sums due to the Contractor for performance of this Contract, the City may retain and keep the whole or any part of the amount for expenses, losses and monetary damages incurred by the City as a
consequence of the Contractor’s breach of the Contract and/or of the City having to procure goods or services as a result of any failure, omission or mistake of the Contractor in providing goods or services as required by this Contract.

11. **Statutory Compliance:**

11.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of the applicable law or regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract, including, but not limited to, the following:


11.2 Wherever applicable law mandates the inclusion of any term or provision into a municipal contract, this Article shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

11.3 The Contractor shall comply with all federal, state and local laws, rules, regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such Work.

11.4 The Contractor shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any and all fines, penalties or monetary liabilities incurred by the City, its officers, agents, and employees, as a result of the failure of the Contractor to comply with the previous sentence. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, rule, regulation, policy, or order, it shall forthwith report the same in writing to the City. The Contractor shall at all times observe and comply with all such existing and future laws, rules, regulations, policies and orders and shall indemnify and hold harmless the City, its officers, agents, and employees, against any claim or liability arising from or based on any violation of any such law, rule, regulation, policy, or order, whether by the Contractor, its agents, employees or subcontractors.

12. **Conflict of Interest:**

Both the City and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A). This Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and, by virtue of its execution of the Contract Documents, certifies to the City that neither it nor its agents, employees, or subcontractors are in violation of General Laws Chapter 268A.

13. **Certification of Tax Compliance:**

This Contract must include a certification of tax compliance executed by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or political subdivision thereof).
14. **Non-Discrimination:**

The Contractor shall carry out the obligations of this Contract in compliance with all requirements imposed by or pursuant to federal, state, and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the United States of America, the Commonwealth of Massachusetts, and the City as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

15. **Assignment:**

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the City, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the City.

16. **Condition of Enforceability against the City:**

The obligations of the City under this Contract for the present or any subsequent fiscal year following the fiscal year in which the Contract is executed are subject to appropriation by the City of funds sufficient to discharge the City’s obligations that accrue in this or any subsequent fiscal year. In the absence of such appropriation or authorization, this Contract shall be terminated immediately upon the Contractor’s receipt of notice to said effect without liability or damages, penalties or other charges arising from such early termination. Expenditures under this Contract for services that will extend beyond a single fiscal year shall not exceed in any fiscal year the amount appropriated or authorized for said fiscal year. The Consultant’s yearly costs, as contained herein, may not exceed the amount appropriated for the fiscal year.

17. **Corporate Contractor:**

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk’s Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. This Contract shall not be enforceable against the City of New Bedford unless and until the Contractor complies with this Article.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Sections 3 and 5, and any Amendments thereof and Acts in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, and shall file with the Commissioner of Corporations duly authenticated copies of its Charter or Certificate of Incorporation and comply with all the laws of the Commonwealth of Massachusetts.

18. **Liability of Public Officials:**

To the full extent permitted by law, no official, employee, agent or representative of the City shall be individually or personally liable on any obligation of the City under this Contract.

19. **Indemnification:**

The Contractor shall indemnify, defend and save harmless the City, its officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys’ fees) that may arise in whole or in part out of or in connection with the work to be performed under this Contract, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly...
employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the City for damage to the City’s property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the City’s gross negligence or willful misconduct.

In any and all claims against the City, its officers, agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen’s Compensation Acts, disability benefit acts, or other employee benefit acts.

The foregoing provisions shall not be deemed to be released, waived, limited, or modified in any respect by reason of any surety or insurance provided by the Contractor under this Contract.

20. Insurance:

20.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker’s Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the City for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the City a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the City.

20.2 Other Insurance Requirements:

a. Comprehensive commercial general liability insurance with limits of at least $1 Million per occurrence and $2 Million aggregate for property damage and $1 Million per person and $2 Million per occurrence for bodily injury, which shall include the City of New Bedford as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor’s employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.

b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least $500,000 per person, and $1 Million per accident.

c. The intent of the above provisions regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor’s responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the City from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

d. All insurance policies shall identify the City as an additional insured (except Workers’ Compensation) and shall provide that the City shall receive written
notification at least 30 days prior to the effective date of any amendment thereto or cancellation thereof. Renewal Certificates shall be filed with the City at least 10 days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the City upon the execution of this Contract, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination. Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the “MIIA” or “ACORD” Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage's shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.

e. The Contractor shall obtain and maintain during the term of this Contract said insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the City.

21. Documents, Materials, Etc:

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the City, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the City, in the United States or any other country. The City shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the City shall vest in the City at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the City before making any statement to the press or issues any material for publication through any medium bearing on the work performed or data collected under this Contract.

22. Independent Contractor:

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, or servants, nor any person for whose conduct the Contractor is responsible, shall be considered an employee or agent of the City for any purpose, and shall not file any claim or bring any action for any worker’s compensation, unemployment benefits, or compensation for which they may otherwise be eligible as a City employee as a result of the Work performed pursuant to this Contract.
23. Audit, Inspection and Recordkeeping:

At any time during normal business hours, and as often as the City may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

24. Payment:

Contractor shall invoice the City for services rendered or goods provided hereunder. Invoices shall clearly describe the work performed and accepted by the City during the invoiced month. The City will compensate Contractor for work accepted by the City during the invoiced month. The City shall make all reasonable efforts to process payments within thirty (30) days from the date of receipt of each invoice. The City shall give prompt written notice of any disputed invoice amount and shall pay the amount not in dispute.

25. Waiver and Amendment:

Amendment of any term, condition, covenant, duty, or obligation contained in this Contract may be made only by written amendment duly executed by the parties hereto.

To the extent allowed by law, any term, condition, duty, or obligation contained in this Contract may be waived only by written agreement of the parties hereto.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

26. Severability:

If any term or condition of this Contract is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remaining terms and conditions shall not be affected thereby and shall remain in full force and effect.

27. Forum and Choice of Law:

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any proceedings or actions relating to the subject matter contained herein shall be brought and maintained in the courts of the Commonwealth sitting in Bristol County, Massachusetts or the United States District Court sitting in the Commonwealth.

28. Notices:

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.
29. **Binding on Successors:**

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the City nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

30. **Entire Agreement:**

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, written or oral, and shall not be modified or amended except by a written document duly executed by the parties hereto.

*In Witness Whereof* the parties hereto have set their hands and executed this as an instrument under seal this the day and year first above written.

<table>
<thead>
<tr>
<th>Vendor:</th>
<th>CITY OF NEW BEDFORD, MASSACHUSETTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By: Jonathan Mitchell</td>
</tr>
<tr>
<td>Title:</td>
<td>Title: Mayor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CERTIFIED that funds are available</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Robert Ekstrom</td>
</tr>
<tr>
<td>Title: City Auditor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPROVED as to Form and Legality</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Eric Cohen</td>
</tr>
<tr>
<td>Title: Associate City Solicitor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEPT.</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
</tr>
<tr>
<td>Title:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PURCHASING DEPARTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Susan Bruce</td>
</tr>
<tr>
<td>Title: Director of Purchasing</td>
</tr>
</tbody>
</table>

Chief Financial Officer

Ari Sky