Request for Proposal
CITY OF NEW BEDFORD

Archival Review
New Bedford, Massachusetts

#19300018

September 5, 2018

Jonathan F. Mitchell
Mayor

New Bedford School Dept.
455 County Street
New Bedford, MA 02740
CITY OF NEW BEDFORD
MASSACHUSETTS
Advertisement

REQUEST FOR PROPOSAL #19300018

The City of New Bedford School Department is soliciting proposals for Review of Archival Collections for Appropriate Disposition, Re-Shelving and Development of an Electronic Accessing Program.

Sealed proposals 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 proposal opening.

PROPOSAL OPENING
Proposals will be accepted
Monday, September 24, 2018
11:00 a.m. Prevailing Time

Contract Documents, including the General Conditions and Notice to Proposers, Form of Contract, Specifications, and other Contract Documents, may be obtained and/or examined on or after September 5, 2018, 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). Documents may also be obtained by emailing susan.bruce@newbedford-ma.gov or 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 proposals submitted should take this factor into consideration, and be calculated accordingly.

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

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

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

Proposals must include ALL DOCUMENTS required by the Request for Proposal. The Awarding Authority reserves the right to waive any informality, reject any or all proposals, or accept other than the lowest priced proposal.

AWARDING AUTHORITY
CITY OF NEW BEDFORD
PURCHASING DEPARTMENT
City of New Bedford, Massachusetts
REQUEST FOR PROPOSAL # 19300018

The City of New Bedford in conjunction with the New Bedford School Department is soliciting proposals for the Appropriate Disposition, and Re-Shelving, and Development of an Electronic Accessing Program its Archival Collections.

Sealed proposals for the Purchase and delivery of the above will be received in the Purchasing Department, Room 208, 133 William Street, New Bedford, MA, until Monday, September 24, 2018 at 11:00 am, at which time all proposals received will be recorded in the presence of such proposers as desire to be in attendance. No proposals will be accepted after the time and date specified. This is not a public opening.

1. There is a Non-Mandatory site visit scheduled for Monday, September 10, 2018 at 10:00 am at the New Bedford School Department, 455 County Street, New Bedford, MA 02740. Please meet at the Finance office.

2. The proposer must submit their proposal in separate sealed envelopes bearing on the outside the name and address of the Proposer, addressed to the Purchasing Agent, City Hall, New Bedford, MA 02740. The Technical Proposal must be properly filled out, signed, sealed and endorsed: “Archival Collection Review – #19300018 -Technical Proposal”. The Price Proposal must be properly filled out, signed, sealed and endorsed: “Archival Collection Review – #19300018 - Price Proposal”.

3. Telephone responses, emailed and faxed replies will not be accepted. No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

4. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as informal by the Procurement Officer.

5. The Proposer will be bound by all applicable statutory provisions of law of the Federal Government, the Commonwealth of Massachusetts and of the City of New Bedford.

6. All submitted proposals and associated price quotes must be guaranteed to the City of New Bedford for a period of thirty (30) days from the date of the proposal opening. If a contract is to be awarded as a result of this RFP, it will be awarded within the thirty (30) day time period.

7. As provided by Massachusetts General Law, Chapter 64H, §6(d), purchases made by the City of New Bedford are exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax; any such taxes must not be included in the quoted price.
8. The City reserves the right to reject any and all proposals, and to make awards in a manner deemed in the best interest of the City.

9. The Proposer will not be permitted to either assign or underlet the contract nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Purchasing Agent.

10. All proposal prices stated must be firm.

11. Before submitting a proposal, each proposer must make a careful study of the specifications contained in this Request for Proposal document and fully assure themselves as to the quality, quantity and type of services/product that the City is seeking to procure.

12. The proposal for this work must cover all contingencies, including all labor and materials, transportation, etc., necessary for the purchase and delivery/execution of the services/product required by the City of New Bedford.

13. If proposers have any questions to ask about specifications or terms of this Request for Proposals, they must be submitted by email to susan.bruece@newbedford-ma.gov no later than Monday, September 17, 2018. No further consideration will be given after the proposal opening. A proposer may correct, modify or withdraw a proposal by written notice received in the Office of the Purchasing Agent, prior to the time and date set for receiving of all proposals.

14. All services and equipment will be purchased from the awarded vendor via City of New Bedford Purchase Order.

15. The specifications as detailed under part entitled TECHNICAL PROPOSAL SPECIFICATIONS shall constitute a part of the contract of purchase, as well as all conditions listed within.
Proposers’ attention is called to Chapter 268A of the Massachusetts General Laws. In connection with this statute, Proposer is required to submit the following information and any other information deemed necessary by the Proposer. All of the following information regarding the Proposer must be completed:

Please indicate business type by placing an X next to the appropriate category:

Corporation ☐ Partnership ☐ Proprietorship ☐
If a Corporation
Full Legal Name

State of Incorporation
If a Partnership
Full Legal Name

If a Proprietorship
Name of Owner or d/b/a

Principal Place of
Business
Place of Business in Massachusetts
Business Mailing Address

Telephone Number: ____________________________ Ext.

Qualified to do business in Massachusetts ☐ YES ☐ NO

Give full names and titles of all the persons and parties interested in the foregoing proposals. (Note: give first and last names in full; in cases of corporations, give names of President, Treasurer, and in cases of partnerships give names of the individual partners.)

Name
Title
A foreign corporation is required to submit its certification of corporation from the Massachusetts State Secretary’s Office, as required by Chapter 151 Section 156.d of the Massachusetts General Laws.

**PROPOSAL FOR:** The Appropriate Disposition, Re-Shelving, and Development of an Electronic Accessing Program for its Archival Collections.

The City of New Bedford Massachusetts is seeking to re-organize, properly archive and re-shelve public documents; as well as create a functional database and accessing program of such documents.

**MINIMUM QUALIFICATIONS:** Failure to meet the minimum standards shall result in a rejection of the proposal.

Proposers must have at least 3 Municipal/Governmental references, for which the proposer has provided services within the last five years.

Proposers should have been in business for at least five years.

Proposers should be an approved vendor State of Massachusetts and have an in-depth knowledge of the *Massachusetts Disposal Schedules for Municipal Government*, as outlined and published by the Office of the Secretary of State.

**PRICE:**
The City has established a not to exceed price of $60,000.00.

**Comparative Evaluation Criteria**

All responsive proposals will be judged against the **Comparative Evaluation Criteria** detailed below. The New Bedford School Department will rank each proposal as:

1. Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;
2. Advantageous: The proposal fully satisfies the standards of the specific criterion;
3. Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;
4. Unacceptable: The proposal does not meet standards of the specific criterion

The New Bedford School Department shall rate and rank each proposal meeting the Minimum Evaluation Criteria according to the Comparative Evaluation Criteria listed below. The New Bedford School Department will then present his/her recommendation to the Director of Purchasing who will then open and review the price proposal and select the most overall advantageous proposal.
Equipment: Shelving must be easily adjustable, sturdy and designed to maximize storage capacity in sync with storage boxes. Boxes must be of archive-quality, reusable and designed to be easily accessible and light enough (at maximum capacity) for all staff to move and lift and come with customized labels, transfer forms and security tape

Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;

Advantageous: The proposal fully satisfies the standards of the specific criterion;

Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

Unacceptable: The proposal does not meet standards of the specific criterion

System: A database that is easily learned, utilized, accessible and maintainable by in-house staff. Features will include a built-in notification of document disposal dates according to state regulations, an exact “address” locator function and the ability to expand as needed

Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;

Advantageous: The proposal fully satisfies the standards of the specific criterion;

Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

Unacceptable: The proposal does not meet standards of the specific criterion

Labor: Project team shall be identified and timeline shall be provided ensuring that all work and services will be completed within the required timeframe. Project team shall be on-site daily and maintain regular and effective communication with the City Clerk and Staff throughout the project’s duration.

Highly Advantageous: The proposal fully meets and significantly exceeds the standards of the specific criterion;

Advantageous: The proposal fully satisfies the standards of the specific criterion;
Not Advantageous: The proposal does not fully meet the standards of the specific criterion, is incomplete, unclear or both;

Unacceptable: The proposal does not meet standards of the specific criterion

Additional Service Options: Optional services (beyond initial archival project) and products are available for potential further enhancement and organization of archives, documents and records. These services and products may include, but are not limited to: off-site storage, micro-filming, scanning, specially-designed cabinets and filing systems, etc.

Highly Advantageous: The proposal provides several additional options that would be of value to the City’s records storage system.

Advantageous: The proposal provides some additional options.

Not Advantageous: The proposal does provide only minimum additional options

Unacceptable: The proposal does not offer any additional added options.

TERMINATION CLAUSE
If at any time the Vendor fails to fulfill or comply with any of the requirements of this proposal/contract, such as shoddy workmanship, executing improper operating procedures, supplying sub-standard, improperly trained employees, not adhering to the work schedule, etc., the New Bedford School Department, at its option, can terminate this contract upon thirty (30) days written notice to the firm. Failure to meet project benchmarks on schedule or utilizing personnel not previously identified in the consultant’s proposal may also be considered as grounds for termination.

SUBMISSION REQUIREMENTS
Proposers must submit one (1) original and three (3) copies of the proposal with all required information included. The proposal must be submitted in a sealed envelope bearing on the outside the name and address of the Proposer, addressed to the Director of Purchasing of the City of New Bedford. Complete proposal packages must be received by:

Monday, September 24, 2018 at 11:00 AM
In the Office of the Purchasing Agent
Attn: Susan Bruce, Director of Purchasing
New Bedford City Hall
133 William Street, Room 208
New Bedford, MA 02740
The proposal pricing is to cover all work required for this project as outlined in the RFP document. Proposal prices must be all-inclusive, including all fees, charges, expenses, travel, postage, fax and telephone charges, preparation of reports, meeting attendance, etc., for all work proposed to be performed by the successful proposer. No separate fees will be paid for mileage, postage, telephone, reports, presentations, etc. This contract will be in effect, in response to this RFP.

**CONTRACT AWARD**

One contract will be awarded to the one responsive and responsible proposer whom the City determines offers the most advantageous proposal, taking into consideration all evaluation criteria set forth in the RFP, as well as price.
CITY OF NEW BEDFORD

BID PRICE SHEET

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

Bid Amount $________________________ (numerical)

Bid Amount ________________________________________________ (words)

Name of Vendor: ___________________________________________

Address: __________________________________________________

Tel: (____)________________________________________________

City/State/Zip: _____________________________________________

Fax: (____)_______________________________________________

By: _______________________________________________________

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

Date: _____________________________________________________

_________________________________________________________

(Signature)
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, Proposals, 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 proposals 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:

__________________________________________
Name (printed)

__________________________________________ (Affix Corporate Seal)
Signature

______________________________                ______________
Title                        Date

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

________________________
Signature of individual submitting proposal

________________________
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 proposal

________________________
Name of business

MUST BE INCLUDED WITH TECHNICAL PROPOSAL
Withdraw, Modify and Amend Proposals

Bidders who wish to withdraw, modify or amend their proposal must do so in writing utilizing electronic mail to the City of New Bedford Director of Purchasing at susan.bruce@newbedford-ma.gov no later than the time and date set forth herein for the receipt of the proposals. 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 proposals, a Bidders may not change any provision of the proposal 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 Request for Proposal. Ignorance of the requirements will not relieve the Bidders from any obligations or liabilities of any contract(s) issued as a result of this Request for Proposal.

Independent Party

Under this Request for Proposal, the successful Bidders declares itself to be at all times acting and performing as an independent party and nothing in this Request for Proposal or any subsequent contract(s) is intended to constitute a partnership or joint venture between the Bidders 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 Bidders shall be used for any partisan political activity or to further the election of any candidate for public office.

Assignment by Contractor

The successful Bidders 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 Bidders'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 Bidders 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 Request for Proposal.

Choice of Law

Any contracts awarded as a result of this Request for Proposal shall be construed under the laws of the Commonwealth of Massachusetts. The successful Bidders 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 Request for Proposal 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 Request for Proposal 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 Request for Proposal 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 Bidders, 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 Proposal, shall forfeit to the City of New Bedford, as liquidated damages for such failure or refusal, the security deposited with its proposal, provided that the amount forfeited shall not exceed the difference between its proposal price and the proposal price of the next lowest, responsive and responsible Bidders. In case of death, disability, bonafide clerical or mechanical error of a substantial nature or similar unforeseen circumstances affecting the Bidders, its proposal deposit shall be returned.

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

Should the successful Bidders fail to commence or diligently perform according to the terms if the contract, the successful Bidders agrees to pay the City of New Bedford, as liquidated damages, Two Hundred Fifty Dollars ($250.00) per calendar day that the successful Bidders 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 Bidders.

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

Proposal Documents Available: Wednesday, September 5, 2018
Site Visit: Monday, September 10, 2018 at 10:00 am
Questions Due: Monday, September 17, 2018 by 12:00 pm
Questions Answered: Wednesday, September 19, 2018 at 1:00 pm
Proposals Due: Monday, September 24, 2018 at 11:00 am

Duration of Contract
The contract shall be for a duration of one year.

END OF SECTION
GENERAL PROPOSAL INFORMATION

Required RFP Sections

The Bidders must provide in its proposal, a reply to the particular specifications included in the Request for Proposal.

ADA, Regulatory, Compliance and Standards

Bidders 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 Bidders, in exchange for entering into an agreement or contract resulting from this Request for Proposal 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 Bidders 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 Bidders in exchange for entering into any agreement or contract resulting from this Request for Proposal 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 Bidders and the City of New Bedford and any and all manners of legal action brought against the successful Bidders and/or the City of New Bedford. Said indemnification includes reasonable attorney’s fees related thereto.

Federal, State and Local Laws

The successful Bidders 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 proposal prices must show exclusion of such taxes. Tax exemption certificates will be furnished as required.
Confidentiality

The successful Bidders acknowledges that in performance of any contract resulting from the Request for Proposal 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 Bidders 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 Bidders 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 Bidders 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 Bidders 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 Bidders 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 Bidders shall be delivered to the City of New Bedford within 14 calendar days after termination of any contract resulting from this Request for Proposal. The successful Bidders agrees to take reasonable steps to insure 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 Bidders 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 Request for Proposal, without the consent of the data subject. The successful Bidders shall use personal data and material derived from such data, only as necessary to the performance of the subject contract. Failure of the successful Bidders to comply with the requirements of this section may be grounds for terminating any contract resulting from this Request for Proposal.

Force Majeure

Neither the City of New Bedford, nor the successful Bidders shall be liable to the other, nor deemed to be in breach of any contract resulting from this Request for Proposal 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 Bidders, shall afford the City of New Bedford the right to terminate any contract resulting from this Request for Proposal without assessment of termination costs or penalties.

Equal Opportunity

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

a. The successful Bidders 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 Bidders 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 Bidders 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 Bidders for this Request for Proposal should note that the City of New Bedford reserves the right to terminate any contracts resulting from this Request for Proposal 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 Bidders fails to fulfill its obligations, the Town of New Bedford may terminate any contract resulting from this Request for Proposal by giving 30 days written notice to the successful Bidders 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 Request for Proposal up to 60 calendar days by providing written notice to the successful Bidders, 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
Bidders. 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 Bidders 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 Bidders 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 Request for Proposal 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 Bidders 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 Bidders shall not be relieved of liability to the City of New Bedford by virtue of any breach of contract resulting from this Request for Proposal by the successful Bidders. In the event of termination pursuant to this section, the City of New Bedford may withhold any payments to the successful Bidders 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 Bidders is determined. In addition to and notwithstanding the above, the successful Bidders covenants and agrees that in the event of termination of any contract resulting from this Request for Proposal, the successful Bidders 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’s default. The successful Bidders further covenants and agrees with the City of New Bedford that the successful Bidders 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 Bidders under any contract resulting from this Request for Proposal.

Obligation in the Event of Termination

Upon termination of any contract resulting from this Request for Proposal, all documents finished or unfinished, data, studies and reports prepared by the successful Bidders 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 Bidders for future use. The City of New Bedford shall promptly pay the successful Bidders 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 Bidders 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 Bidders 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 Bidders provides under the terms of this Request for Proposal and paid with public funds, shall vest in and be retained by the City of New Bedford. Upon completion of performance of the awarded Bidders’s contract, the awarded Bidders 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 Proposal, normal wear and tear excepted.

Anti-Boycott Warranty

During the term of any contract resulting from this Request for Proposal, neither the successful Bidders 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 Bidders or by a person or persons or business entity or entities which directly own at least 51% of the ownership interest of the successful Bidders.

END OF SECTION
Proposal Information

Bidders Communication

Bidders are prohibited from communicating directly with any employee of the City of New Bedford except as specified in this Request for Proposal, 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 Request for Proposal. Bidders may contact the person identified on the cover sheet of this Request for Proposal in the event this Request for Proposal is incomplete.

Reasonable Accommodation

Bidders with disabilities or hardships that seek reasonable accommodation, which may include receipt of the Request for Proposal 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 Bidders requesting accommodation must submit the written request via email, which describes the Bidder’s disability and the requested accommodation to the contact person for the Request for Proposal. The City of New Bedford reserves the right to reject unreasonable requests.

Public Records

All proposals and information submitted in response to this Request for Proposal 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 Bidders’s proposal inconsistent with these statutes will be disregarded.

Brand Name or Equal

Unless otherwise specified in this Request for Proposal, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Request for Proposal 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 Bidders awarded a contract under this Request for Proposal 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’s response and identified as part of the contract will not be compensated under any contract awarded pursuant to this Request for Proposal.

Required Response Attachments

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

If the Bidders is a Corporation, the names and addresses of the Corporate Officers and the State and date on Incorporation must be included. The Bidders 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 Bidders is a Sole Proprietor): If the Bidders 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 Proposals

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

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

Rejection of Bidder’s Response

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

- Fails to adhere to one or more of the requirements.
- Fails to submit its response to the required address on or before the Request for Proposal are due.
- Fails to submit a response in accordance to the format and instructions specified or to supply the minimum information requested in the Request for Proposal.
- Fails to meet unconditionally or is unable to demonstrate competence to meet the requirements of the Request for Proposal.
- 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.

Request for Proposal Cancellation

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

No Guarantee of Purchase

The City of New Bedford makes no guarantee that any purchases will take place from any contract resulting from this Request for Proposal, nor does the City of New Bedford guarantee any minimum quantity of purchase from any contract resulting from this Request for Proposal. Any estimated or past procurement volumes referenced in this Request for Proposal are included only for the convenience of the Bidders, and not to be relied upon as any indication of future purchases.

The Bidders 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 Bidders.

The City of New Bedford requires a single point of contact for any contract resulting from this Request for Proposal. Subcontractors may be used, but the successful Bidders, as a prime contractor, shall be responsible for meeting all of the terms of any contract resulting from this Request for Proposal, and must be accept full responsibility for any subcontractor’s performance.

Bidders 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 Bidders 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

Bidders may submit written inquiries concerning any part or attachment of this Request for Proposal. Written inquiries regarding issues outside of the scope of this Request for Proposal 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 Request for Proposal.

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 Bidders. The Bidders is responsible for confirming receipt of its written inquiries with Susan Bruce, Director of Purchasing, City of New Bedford at susan.brace@newbedford-ma.gov.

The City of New Bedford will provide written responses via electronic mail (e-mail) to all written inquires received by the required due date. Responses will not identify the inquiry by the Bidders.

Deadline for Submission
All responses to this Request for Proposal 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
Sample City of New Bedford Consulting Contract
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
CITY OF NEW BEDFORD
133 WILLIAM STREET
NEW BEDFORD, MASSACHUSETTS
AND

Contract #

Date

WHEREAS, the CITY OF NEW BEDFORD, MASSACHUSETTS, a municipal corporation, 133 William Street, New Bedford, Bristol County, Massachusetts 02740, hereinafter referred to as the “City,” acting by and through the ______________ , has need for the services of a (CONSULTANT) for a ______________.

WHEREAS, ______________ hereinafter referred to as (the “Consultant”) submitted a proposal to perform the Scope of Services described herein in Appendix "A" and undertake related duties and responsibilities required under this Agreement; and

WHEREAS, the Consultant’s proposal indicates that it is qualified by experience and training to perform said Scope of Services and undertake the duties and responsibilities required under this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the City and Consultant hereby agree as follows:

This Agreement is comprised of Part I and Part II, and includes all appendices, attachments, submitted documents, addenda, technical proposal, the price proposal and all documented negotiations relevant to the proposal. Part I includes details of the services to be performed, schedule of the services, and compensation. Part II contains the Terms and Conditions of Agreement, which are the general terms of the engagement between the City and Consultant.
PART I
SCOPE OF SERVICES

The complete Scope of Services, Schedule, and Budget for performance of the Scope of Services are contained herein in Appendixes A, and B and C respectively. The Scope of Services, Schedule, and Budget may be modified by agreement of the City and Consultant, providing any such modification complies with applicable law. The Consultant shall perform services by specific Task authorized by its proposal or on an as needed basis by Change Order or Work Order in accordance with this Agreement.

PART II
TERMS AND CONDITIONS

The City's engagement of the Consultant is under the following terms and conditions that form an integral part of this Agreement:

1. **Scope**: The Scope of Services, Schedule, and Budget encompass the entire time of performance of the Agreement regardless of whether the term exceeds one (1) year.

2. **Prices; Term**: All prices contained in the Budget attached hereto as Appendix C shall remain the same throughout the term of the Agreement. The TERM OF THIS CONTRACT SHALL BE ____________, beginning ___________ and ending __________.

3. **Services Actual Amount**: The services required for the proposed contract are an actual amount.

4. **Appropriation; Termination**: The City may terminate this Agreement if funds are not appropriated to support continuation of performance beyond the first year.

5. **Payment Responsibility**: Payment to Consultant is the sole responsibility of signatory of this Agreement and is not subject to third party agreements.

6. **Commencement**: All schedules set forth in the Scope of Services commence upon the execution of this Agreement.

7. **Compensation**: The City will compensate Consultant for the satisfactory performance of the Tasks included in the Scope of Services as agreed upon in Appendix A. Compensation will be based on the proposed price to perform the respective Task. Total compensation for all services rendered by the Consultant under Phase I of this Agreement shall not exceed $_____________________ unless authorized by a Change Order duly executed by Consultant and the City. Compensation for subsequent Phases will be determined after the details of each respective Phase have been priced and presented to the City by Consultant and, if accepted by the City, shall be subject to Change Order.

8. **Invoices**: Consultant shall submit a monthly invoice no later than the 15th day of each month for services rendered the previous calendar month. Invoices shall include an attached progress report clearly describing the monthly and cumulative progress for each Phase. Where applicable, invoices shall include a description of services provided, labor categories, and for each labor category the hourly rate(s) and number of hours billed. The City will compensate Consultant for each Phase, or percentage thereof, completed 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.
9. **Insurance:** Consultant agrees to carry the following insurance, with the City clearly designated as additional insured, during the term of this Agreement. Prior to execution of the Agreement, Consultant shall provide proof of the following coverage:

- Workers Compensation and Employer’s Liability Insurance in compliance with statutory limits;
- Liability Insurance with $1,000,000 General Liability Coverage
- $2,000,000 General Aggregate Liability coverage
- Certificate of Errors and Omissions Insurance will also be required with $1,000,000 minimum coverage
- Automobile Liability Insurance including non-owned and hired automobiles with combined single limit of $1,000,000 per accident

Prior to execution of this Agreement, Consultant will furnish certificates of insurance evidencing the above coverage to the City for the City’s review and approval.

10. **Indemnification:** Consultant agrees to indemnify and hold the City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent of its applicable insurance coverage and to the extent that such judgments, losses, damages or expenses are caused by Consultant’s negligent acts, errors, or omissions arising out of its performance of services under this Agreement.

11. **Delays:** Consultant shall not be responsible for failure to perform or for delays in the performance of services that arise out of causes beyond the control and/or without the fault or negligence of Consultant. Consultant shall notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay.

12. **Services for Use of City:** Consultant’s services will be performed on behalf of and solely for the benefit and exclusive use of the City and the City’s agents and designees for the limited purpose set forth in the Agreement. The City acknowledges that Consultant’s services require decisions that are not necessarily based upon science, but rather upon judgmental considerations.

13. **Ownership and Use of Documents:** To the greatest extent permitted by law, the City of New Bedford agrees that any and all intellectual Property and technology designed, made or conceived by Consultant (solely or jointly with others) arising from the Consultant’s work for the City of New Bedford, is the sole property of the Consultant, without royalty or any other consideration to the City of New Bedford. To the greatest extent of the law, all information, notes, interview sheets, lists and other documents developed by the Consultant shall remain the property of the Consultant. The Consultant shall at all times obtain the prior written approval of the city before it, any of its officers, agents, employees or subcontractors, either during or after termination of the agreement, makes any statement bearing on the work performed or data collected under this Agreement to the press or issues any material or publication through any medium of communication. It the consultant, or any of its Officers, agents, employees or subcontractors, publishes a work dealing with any aspect of performance under this agreement, or of the results and accomplishments attained in such performance, the city shall have a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the publication.

14. **Confidential Information:** Consultant acknowledges that its services hereunder are being rendered to the City of New Bedford Office of Planning, communications, reports,
findings, conclusions, theories, and other work, however characterized, performed by Consultant hereunder is not to be divulged to any person or entity other than Office of City Planner, City of New Bedford, or persons designated by he/she as privileged to receive such information. Consultant further acknowledges that it may receive confidential information as it provides services under this Agreement and agrees that neither it nor its employees, officers, agents, attorneys, subcontractors or other representatives, however described, shall discuss, relay, transmit or otherwise divulge such information in person or by print or electronic media, whether by telephone or e-mail, with or to any person who is not privileged to receive such information by virtue of this Agreement or applicable state or federal law, statute or regulation. This prohibition is absolute, the violation of which will constitute grounds for the City’s termination of this Agreement.

15. **Independent Contractor:** Consultant is an independent contractor, solely responsible for methods and means used in performing the services under this Agreement, and is not an employee, agent, or partner of the City. Consultant is not authorized to enter into any agreement with any party on behalf of the City.

16. **Certifications:** Consultant certifies under the pains and penalties of perjury pursuant to M.G.L. c. 62C, § 49A that the Consultant has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and pursuant to M.G.L. 151A, § 19A(b), has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System; and with all laws of the Commonwealth relating to Worker’s Compensation, M.G.L. c. 152.

17. **Licenses; Permits:** The Consultant also represents that he is qualified to perform all services required under this Agreement and has obtained all requisite licenses and permits to perform these services.

18. **Appropriations; City’s Obligations:** Appropriations for expenditures by the City and authorization to spend for a particular purpose are ordinarily made on a fiscal year basis. The fiscal year of the City is the twelve (12) month period ending June 30 of each year. The obligations of the City under this Agreement for the present or any subsequent fiscal year following the fiscal year in which the Agreement 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 Agreement shall be terminated immediately upon the Consultant’s receipt of notice to said effect without liability or damages, penalties or other charges arising from such early termination. Expenditures under this Agreement 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 year.

19. **Records; Inspection:** The Consultant shall maintain books, records and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under the Agreement. All such records shall be kept for a period of six (6) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The City, or any of its duly authorized representatives or designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records,
and other compilations of data of the Consultant which pertain to the provisions and requirements of this Agreement. Such access shall include on-site audits, reviews, and copying of records.

20. **Notices:** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by certified mail to: ________________ for the Consultant and ________________ for the City.

21. **Representations; Reliance:** In entering into this Agreement, the City and Consultant have relied only upon the representations set forth herein. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which the City or Consultant relied in entering into this Agreement. No statements, representations, warranties, or understandings, unless contained herein, exist between the City and Consultant.

22. **No Inducement:** Consultant certifies that neither it nor any of its employees, agents, officers, attorneys, subcontractors or representatives, however described, has given, offered or agreed to give any person, corporation or other entity any gift, contribution, offer of employment or other reward as an inducement for, or in connection with, the award of this Agreement.

23. **Solicitation:** Consultant certifies that no person, corporation or other entity, other than a bona fide full-time employee of Consultant, has been retained or hired by Consultant to solicit for or in any way assist Consultant in obtaining this Agreement upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the Agreement to Consultant.

24. **Accounting:** Consultant agrees to maintain internal accounting controls and permit the City to view its audited financial statements in camera at Consultant’s offices upon city’s request.

25. **Waivers:** A waiver by either the City or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party’s rights with respect to any other or further breach. Forbearance or indulgence of a breach of this Agreement in any form or manner by either the City or Consultant shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.

26. **Invalidity; Severability:** The invalidity, illegality or unenforceability or any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The City and Consultant further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close to possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27. **Termination for Cause:** This Agreement may be terminated in writing by either party in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. The non-performing party shall have fourteen (14) calendar days from the receipt of the termination notice to
cure its failed performance or to submit a plan for such cure acceptable to the other party. All notices hereunder shall be delivered by certified mail, return receipt requested.

28. **Termination for Convenience:** The City may terminate or suspend performance of this Agreement for the City’s convenience upon Consultant’s receipt of written notice from the City. Consultant shall terminate or suspend performance on a schedule acceptable to the City, and the City shall pay Consultant for all the services performed through and including the date of Consultant’s receipt of such notice. Upon restart, if performance is suspended hereunder, an equitable adjustment may be made to Consultant’s compensation and schedule. An equitable adjustment shall not apply to work suspended or terminated due to Consultant’s failure to perform in accordance with the terms of this Agreement. Upon termination of this Agreement, with or without cause, Consultant shall, within 14 days, submit to the City all documents and information, as described in Paragraph 13 above herein, in its possession, and shall submit final payment invoice information. The City shall not make final payment until Consultant submits all said documents and information. The City shall place in escrow any amount of the final payment that it disputes is due, and, upon placing said amount in escrow, Consultant shall surrender all said documents and information as though it had been paid in full.

29. **Dispute Resolution:** The City and Consultant agree to negotiate in good faith to resolve any disputes or differences arising under this Agreement. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve by the dispute by direct negotiation or mediation. Any dispute that cannot be resolved by this negotiation will be submitted to mediation conducted in accordance with the current Industry Mediation Rules of the American Arbitration Association or such other form of non-binding Alternative Dispute Resolution (ARD) as they may mutually agree upon. City and Consultant agree that, in the event their dispute resolution procedures as described above do not resolve any disagreement among them, and any party elects thereafter to institute legal proceedings, the forum for any such action relating to this Agreement shall be in courts located in the Commonwealth of Massachusetts, either state or federal.

30. **Successors and Assigns:** The City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

31. **Assignment; Transfer of Ownership:** Neither the City nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. The City reserves the right to terminate this Agreement by written notice in the event of a sale or transfer of ownership in the Consultant’s business entity, however constituted. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Further, except as noted in the Scope of Services, Consultant shall not subcontract for any service or portion thereof to be rendered under this Agreement without the prior written consent of the City.

32. **Project Manager:** Consultant’s Project Manager shall be available to direct and coordinate activities of the project to ensure that the project progresses on schedule and within the prescribed budget. Any change in Project Manager assigned to the City by Consultant requires the written approval of the City or its designee.
33. **Staffing:** Consultant agrees to staff the project with a sufficient number of qualified personnel ("Project Team") to assure at all times effective and timely management, administration and superintendence with respect to the services to be provided by Consultant under this Agreement. The City may require replacement of any member of the Project Team and may require increased levels of staffing by Consultant if necessary to achieve proper management, administration, and superintendence. Consultant shall not replace members of the Project Team without prior written consent of the City which consent shall not be unreasonably withheld.

34. **Laws Governing Consultant:** Consultant’s activities hereunder shall be governed by the laws of the Commonwealth of Massachusetts, unless otherwise specified.

35. **Entire Agreement:** This Agreement, together with all Attachments, Appendices, Addenda (if applicable), the Certificate of Non-Collusion, Vote of Corporation Authorizing Execution of Corporate Agreements, and Certificate as to Payment of State Taxes constitute the entire Agreement between the City and Consultant and supersede all prior written or oral understandings. This Agreement and said Attachments, Appendices, Certificate of Non-Collusion, Vote of Corporation Authorizing Execution of Corporate Agreements and Certificate as to Payment of State Taxes may only be amended, supplemented, modified or canceled by a written instrument duly executed by the City and Consultant.

36. **Governing Law:** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, unless otherwise specified.

37. **Paragraph Headings:** The paragraph headings in this Agreement are for convenience of reference only and in no way define, increase or limit the scope or intent of any provision of the Agreement.

38. **Authorized Signature:** The undersigned individual, who has signed and executed this Agreement on behalf of Consultant, hereby: 1) represents, warrants, and certifies to the City of New Bedford that he/she is authorized by Consultant to sign and execute this Agreement on its behalf and bind it to the obligations, terms, and conditions of the corporation set forth herein; 2) acknowledges that the City of New Bedford is relying upon such representation, warranty, and certification and will be damaged thereby if he/she is not so authorized; and, 3) agrees to indemnify and hold harmless, personally and in his/her own stead, the City of New Bedford, its officers, agents, attorneys, employees, and representatives, however described or characterized, against and from legal liability for all judgments, losses, and expenses and any and all claims and/or damages, whether direct or indirect, choate or inchoate, that it, or any of them, may incur and/or suffer, if he/she is not so authorized.

Consultant:

By: 
Title: 

CITY OF NEW BEDFORD, MASSACHUSETTS

By: Jonathan F. Mitchell 
Title: Mayor

CERTIFIED that funds are available

Dept:

By: 
Title: 

PURCHASING DEPARTMENT

By: Susan Bruce 
Title: Director of Purchasing

Approved as to Form and Legality

Chief Financial Officer

By: Shannon Shreve 
Title: Associate City Solicitor

Ari Sky