

Proposer / Bidder Registration Form

It is the Bidder's responsibility to make certain they have received any/all addenda relating to their bid / proposal prior to the bid opening date. If you are downloading a bid we strongly encourage you to notify the City of Beverly Purchasing Department at [dgelineau@beverlyma.gov](mailto:dgelineau@beverlyma.gov) and provide us with the following information. In the event an addendum is issued it will be sent to all bidders who have provided the City with this information.

Request for Proposal or Invitation for Bid Number: 16-018

Contact Name:

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Company Name:

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Address:

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City/Town:

State:

Zip Code:

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Phone:

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Fax:

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Cell:

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Email:

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**16-018**

**LOADALL STYLE FORKLIFT TRUCK**

**BIDS DUE:**

**Tuesday, March 15, 2016 @ 11:00 A.M.**

at the Office of the Purchasing Agent, City Hall  
191 Cabot Street, Beverly, Massachusetts 01915

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BID CERTIFICATION:

Complete this page by signing in the space below and return with completed pricing pages.

As required under Chapter 233 and 701 of the Mass. Acts and Resolves of 1983 and Chapter 30B of Massachusetts General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below. **Failure to offer such signature will result in rejection of the bid.**

1. *"The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or their organization, entity, or group or individuals" and,*
2. *"Pursuant to M.G.L. c.62C, §49A, I hereby certify, under penalties of perjury that to my best knowledge and belief the undersigned bidder has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support."*

This bid is submitted by:

\_\_\_\_\_  
(Complete name of firm to be given here)

Signature: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Business Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Employer I.D. #: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Pricing Sheet- Loadall Style Forklift Truck**

To the City of Beverly, Massachusetts, herein called the Owner, acting through its Purchasing Agent, for the purchase, delivery, and acceptance of one (1) new unused Loadall Style Forklift Truck, as specified in this Invitation to Bid.

Description:

One (1) Loadall Style Forklift Truck, 2016 model Year or Newer, New and Unused.

Model Year of Forklift Truck: \_\_\_\_\_

Write out Model Year of Forklift Truck: \_\_\_\_\_

Price: \$ \_\_\_\_\_

Write out Price: \_\_\_\_\_

State availability date. Vehicle will be available within \_\_\_\_\_ days after award of bid date.

All warranties and initial service guarantees are to be submitted with bid. The above price to include and cover the furnishing of all materials, except as herein otherwise specified the performing of all labor, requisite or proper, and the providing of all machinery, tools, equipment, specifications, information to bidders and bid documents. The above price to include delivery of the vehicle to Mass Task Force, 43 Airport Road, Beverly, MA 01915

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email Address

In the event of a discrepancy between the numeral price and the written price the lower price shall prevail.  
In the event of a tie bid a coin toss shall decide the winner.

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**INVITATION FOR BIDS (IFB)**

**Bid Items:** Purchase of One (1) Loadall Style Forklift Truck

**Bid Due Date:** Tuesday, March 15, 2016 11:00 A.M.

**Deliver To:** David Gelineau,  
Purchasing Agent  
Beverly City Hall  
191 Cabot Street  
Beverly, MA 01915

The City of Beverly invites the submission of sealed bids for the purchase of One (1) New Unused 2016 or Newer New Unused Loadall Style Forklift Truck. To obtain copies of the Bid Documents, please contact the Office of the Purchasing Agent, City Hall, 191 Cabot Street, Beverly, MA 01915 during normal business hours, telephone 978-921-6000, or via email [dgelineau@beverlyma.gov](mailto:dgelineau@beverlyma.gov). or at <http://www.beverlyma.gov/departments/procurement/forms/>

All sealed bids must be delivered to the above address, no later than the time of the official BID DUE DATE as stated above, at which time and place the bids will be publicly opened and read. The bidder assumes the risk of any delay in the mail; bids received after the time stated for the official BID DUE DATE will be returned unopened.

The City of Beverly reserves the right to reject any or all bids, or to accept bids either in whole or in part, to award contracts by individual items or by lump sum total, or to waive any minor informalities or defects in any bid should it be deemed in the best interest of the City of Beverly. Any bid submitted shall be binding for sixty days (60) beyond the date of the bid opening.

**INSTRUCTIONS TO BIDDERS**

**Receipt and Opening of Bids**

Receipt and opening of bids will be as stated in the Invitation for Bids which is enclosed herein and is an integral part of these instructions. No bids received after the time established for the closing of bids will be considered regardless of the cause of the delay in the receipt of any such bid(s).

**Preparation and Submission of Bids**

The bids must be filled out on the form prescribed and enclosed in a sealed envelope that shall be marked on the outside with the words, "**Loadall Style Forklift Truck**" and the **Name and Address** of the Bidder.

All bids **MUST** contain the following documents, properly signed and executed in order for a bidder to be considered responsive.

1. Vendor's Letter of Transmittal- stating the following:
  - a. That the bid will remain in effect for a period of sixty (60) calendar days after the deadline for submission of bids and thereafter until a contract is entered into, or the procurement is terminated; whichever occurs first. Bids offering an effective period of less than sixty (60) calendar days will be considered non-responsive.
  - b. That the vendor will deliver the Loadall Style Forklift Truck to: Mass Task Force, 43 Airport Road, Beverly, MA 01915 F.O.B., at the bid price on the Pricing Sheet within the time specified.
  - c. Include the Name, Title, Address, and Telephone Number of one or more individuals who can respond to requests for additional information.
  - d. Include the Name, Title, Address and Telephone Number of one or more individuals who are authorized to negotiate and sign a contract. Bids by corporations must be signed in the corporate name by the corporate officer with authority to sign. Name and title, along with the corporate address, shall be printed below the signature, bids by a partnership must be signed

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in the partnership name by a partner with authority to sign, name, title and official address of the partnership.

2. Bid Deposit

Each bid must be accompanied by a certified, treasurer's or cashiers check issued by a responsible bank or trust company in the amount of \$1,000, payable to the City of Beverly. This check will serve as a bid security until a contract is entered into. Any bidder who fails to execute a contract after being awarded same will forfeit the bid deposit as liquidated damages to the City of Beverly. Upon award of contract, bid deposits will be returned to the unsuccessful bidders.

3. Bid Summary

4. Collusion and Tax Certification (Bid Certification)

5. Certificate as to Corporate Bidder (if required)

6. Pricing Sheet

The bid prices(s) must be written or typed in ink in the space(s) provided on the official Pricing Sheet. Bid shall be construed to cover all costs incurred by the contractor to furnish the vehicle in accordance with the specifications, including travel and mileage, proper packing, and cost of delivery.

All substitutions must be clearly identified and be of equal quality. Any substitutions found not to be equal will render the bid non-responsive. Any vendor supplying inferior merchandise will not be considered for future bids.

Two (2) complete sets of bid response shall be returned, properly signed.

**Modification of Bids**

A bidder may correct, modify, or withdraw a bid by written notice received by the Purchasing Agent prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. " to the address listed in part one of this section. 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.

**Questions About the Bid**

Questions concerning this invitation for bids must be submitted in writing to the Purchasing Agent either at the address above, faxed to (978) 921-8301 or e-mailed to [dgelineau@beverlyma.gov](mailto:dgelineau@beverlyma.gov) no later than five calendar days before the scheduled bid open time. No oral interpretation shall be made. Questions may be delivered, mailed, faxed or e-mailed. Written responses will be mailed, faxed or e-mailed to all bidders on record as having picked up the IFB.

**Withdrawal of Bids.**

Bids may be withdrawn prior to the time established for the opening of bids only on written request to the Purchasing Agent.

**Bid Documents**

The documents comprising the bid consist of: Invitation for Bids, Instructions to Bidders, General Conditions, Special Requirements (if any), Collusion and Tax Certification (Bid Certification), Certificate as to Corporate Bidder (if applicable), Pricing Sheet, Bid Specifications and any Addenda that may have been issued. The same documents will be incorporated into the contract documents.

## **GENERAL CONDITIONS**

### **Qualifications**

Bidders must have been regularly engaged for at least three years, prior to the date of bid opening, in the business of supplying and servicing the product. The City shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligations under the contract, and the bidder shall furnish the City all such information and data for this purpose as it may request, including references. Past performance, withdrawal of bids due to reckless bidding, cancellation of orders due to poor or unsatisfactory delivery, and substitutions not approved by the Awarding Authority may be cause for non-acceptance of bids.

### **Licensing**

The contractor shall possess all required and necessary licenses as may be specified by federal, state and/or local authorities, related to the handling of the products and services referred to in this bid.

### **Award of Contract**

The City of Beverly will be the Awarding Authority. The City will award the contracts(s) to the responsive and responsible bidder(s) offering the newest model year vehicle at the lowest price for the specified item. In the case of a tie bid a coin toss will decide the bid winner. The Awarding Authority may exercise any or all of the options listed below before awarding a contract.

1. A visit to the bidder's place of business.
2. Requests to provide additional information to clarify their bid.

Contract will be awarded within sixty (60) days of the bid opening and any bid submitted shall be binding for sixty (60) days. All awards will be made in the best interest of the City of Beverly. The bidder(s) to whom the award is made must enter into a written contract with the City of Beverly and the requirements set forth in the bid documents shall become part of the contract. Award is contingent upon appropriation

### **Breach of Contract**

In the case of failure on the part of the contractor to execute as per the agreement, the Awarding Authority reserves the right to terminate the contract, satisfying its want through another contractor, and the City of Beverly shall collect from the contractor any difference in the price as a result of such failure on the part of the contractor.

### **Payments**

The City shall pay in full upon accepted delivery of vehicle. Purchases by the City are exempt from federal, state, and/or local sales and excise taxes.

### **Cancellation of Bid**

The City of Beverly reserves the right to reject any or all bids, accept any bid, or divide the award as deemed in the best interest of the City of Beverly, or to waive any minor informality in bids.

### **Bid Responses**

All bids and related documents submitted in response to this IFB are subject to the Massachusetts Freedom of Information Law, M.G. L. Ch. 4, s.7, subsection 261, regarding public access to such documents. Statements or endorsements inconsistent with those statutes will be disregarded.

Catalog numbers and brand names, if used, are only to indicate the type and to set standards. Bidders are at liberty to offer bids on substitute material, which must be of equal quality. Bids must state, however, all cases where substitutes are offered and pertinent information must be supplied with the bid. Please provide material safety data sheets for all products for which there are material safety sheets.

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Any questions regarding this bid should be written and directed to: David Gelineau, Purchasing Agent, 191 Cabot Street, Beverly, MA 01915. [dgelineau@beverlyma.gov](mailto:dgelineau@beverlyma.gov)

### **General Specifications**

The City of Beverly is soliciting bids from authorized distributors for the **purchase** of the following:

**One (1) new and unused 2016 or newer New Unused Loadall Style Forklift Truck as specified herein.**

**Delivery is to be no later than 60 days after award of the bid date.**

#### **Guarantee:**

Forklift shall be guaranteed to be free of defects in material and workmanship during the first 12 months or 1,000 operating hours, whichever comes first (excluding maintenance items).

**Evidence of guarantee coverage shall be submitted with the bid documents in the form of a guarantee certificate, or in the form of a letter on the bidder's letterhead indicating guarantee coverage.**

**Guarantee repairs where appropriate shall be performed in Beverly.**

The said distributor shall verify that there is a full service certified service center for the equipment within 150 miles of 43 Airport Road Beverly, MA 01915. It is expected that the distributor have an adequate inventory of spare parts to insure that this vehicle is operational at all times.

The bidder's submittal shall include a complete description of the product offered and a complete description of the features by number or code and a list of all dealer installed options.

Requests for approved equals and any deviations from the specifications must be itemized on the bidder's letterhead. The use of a specific article or manufacturer's name in the specifications shall be construed as indicating the type of equipment, design, general construction and finish. Such use shall not be construed as limiting or excluding any manufacturer or vendor, the term "or approved equal" if not inserted is implied. Such use shall not be construed as limiting or excluding any manufacturer's product of comparable quality, design and efficiency, however, in the case of a product offered as "approved equal", the bidder shall furnish such evidence as necessary in the documents submitted to indicate the quality of their product. When a proprietary product is specified, bidders are requested to list on their letterhead any portion of the description which does not apply to the product offered, insert their own brand name, number or other suitable identification, and include literature or other material necessary to enable their item to be compared to the standard specified. The above statement does not relieve a bidder from the requirement of including all items and equipment as specified or providing evidence of "approved equal" components.

#### **Cost**

The City of Beverly shall pay for the vehicle upon successful bidder delivering vehicle to Mass Task Force, 43 Airport Road, Beverly, MA 01915 F.O.B., at the bid price on the Pricing Sheet within the time specified and the City of Beverly acceptance of the vehicle. Successful bidder shall give a minimum of 24 hours notice of delivery to the City of Beverly.

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**CERTIFICATE AS TO CORPORATE BIDDER**

I, \_\_\_\_\_ certify that I am the \_\_\_\_\_ of the Corporation named as bidder in the attached Bid Form; that \_\_\_\_\_, Who signed said Bid Form on behalf of the bidder was then \_\_\_\_\_ of said Corporation; that I know his/her signature hereto is genuine and that said Bid Form was duly signed, sealed and executed for and in behalf of said Corporation by authority of its governing body.

A TRUE COPY,

ATTEST: \_\_\_\_\_  
(Name – Type or Print)

PLACE OF BUSINESS:

\_\_\_\_\_

DATE OF THIS CONTRACT:

\_\_\_\_\_

\_\_\_\_\_  
Clerk's Signature

Corporate Seal

This Certificate must be completed where Bidder is a Corporation and should be so completed by its Clerk. In the event that the Clerk is the person signing the Proposal on behalf of the Corporation, another Officer of the Corporation must complete this certificate.

NOTE: All bidders shall submit this certification, if a corporation, with the bid.

**SPECIFICATIONS**

- Loadall style forklift with a minimum lift capacity of 5500LBS
- Minimum lift height of 20 feet
- All wheel drive with option for crab steer
- Diesel Engine
- Automatic transmission (hydrostatic transmission with a creep function)
- Limited slip differential in front axels
- Pneumatic industrial tires
- Enclosed cab with tilt and rake steering column, heat, AC roof and windshield guards
- Gauges - hour meter, fuel indicator, warning for coolant, transmission, engine oil pressure, and air cleaner
- Single lever Joy stick control
- Two stage gear pump with quick connect fittings @4 (fitting size to be provided at time of award)
- Attachment mounting must be JCB Q-fit style compatible with our current attachments
- Lights road light kit
- Lights front and rear work light
- Back up alarm
- Hydraulic positioning drop forks 60”long
- Extra wheel and tire
- Factory service manuals for forklift and engine
- Factory parts manual for forklift and engine
- Delivered to 43 Airport Rd Beverly MA 01915

# CITY OF BEVERLY

## CONTRACT

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**DATE:** \_\_\_\_\_

This Contract is entered into on, or as of, this date by and between the City of Beverly (the "City"), and

\_\_\_\_\_  
["Contractor"]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Address of the Contractor]

\_\_\_\_\_  
[Telephone Number]

\_\_\_\_\_  
[FAX Number]

1. This is a Contract for the procurement of the following:
  
  2. The Contract price to be paid to the Contractor by the City of Beverly is:
  
  3. Payment will be made as follows:
  
  4. Definitions:
    - 4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the City of Beverly. 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.
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- 4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period. 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 document 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 approved Amendments and Change Orders.
- 4.5 Goods: Goods, Supplies or Materials.
- 4.6 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 this work, but does not include one who merely furnishes material not so worked.
- 4.7 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 pursuant to a provision for extension contained in the Contract documents 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 Finance Director. The time limits stated in the Contract documents are of the essence 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 Finance Director. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges.

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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 best interests of the City 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 this 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 state law and/or regulations, and City bylaw and/or regulations.
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9. 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 this Contract, and the City of Beverly shall have all the rights and remedies provided in the Contract documents, 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 damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the City may keep the whole or any part of the amount for expenses, losses and damages incurred by the City as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance:

10.1 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 law and 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:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq.* - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section 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.

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any

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way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the City. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the City of Beverly, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

11. Conflict of Interest:

Both the City and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and 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 executing the Contract documents the Contractor certifies to the City that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance 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 Subdivision).

13. Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

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15. Condition of Enforceability Against the City:

This Contract is only binding upon, and enforceable against, the City if: (1) the Contract is signed by the Mayor or its designee; and (2) endorsed with approval by the City Finance Director as to appropriation or availability of funds; and (3) endorsed with approval by the City Solicitor as to form.

16. 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. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the City of Beverly unless and until the Contractor complies with this section.

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

17. Liability of Public Officials:

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

18. Indemnification:

The Contractor shall indemnify, defend and save harmless the City, the City's 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 reasonable attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, 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 its 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 his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the City's

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gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract.

19. 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 evidence of 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. 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 bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium.

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21. 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 transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

22. Payment

The City agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the City of the work completed.

23. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

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.

24. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

25. 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

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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 in the Contract and to the City of Beverly by being sent to the City Solicitor, Beverly City Hall, 191 Cabot Street, Beverly, Massachusetts 01915.

26. Binding on Successors:

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

27. Complete Contract:

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

28. Supplemental Conditions:

The foregoing provisions apply to all contracts to which the City of Beverly shall be a party. One of the following "Supplements" *must* be "checked" as applicable to this Contract, shall be attached hereto, and shall in any event apply as the nature of the Contract requires. The Supplement contains additional terms governing the Contract:

GOODS

SUPPLEMENT "G" - Applicable to Contracts for the procurement of Goods (governed by the provisions of General Laws Chapter 30B)

SERVICES

SUPPLEMENT "S" - Applicable to Contracts for the procurement of Services (governed by the provisions of General Laws Chapter 30B)

CONSTRUCTION

SUPPLEMENT "C" - Applicable to Contracts for Construction

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## SUPPLEMENT "G"

1. This form supplements the general provisions of the Contract between the City of Beverly, and \_\_\_\_\_, which Contract is a contract for the procurement of goods.

2. "Goods" shall mean furnishing of item(s) by the Contractor. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

3. Change Orders:

Change orders for contracts subject to Massachusetts General laws Chapter 30B may not increase the quantity of services by more than twenty-five (25%) per cent, in compliance with General Laws Chapter 30B, §13.

4. Minimum Wage/Prevailing Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage), as shall be in force and as amended.

5. Insurance:

The intent of the Specifications 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.

The Contractor shall obtain and maintain the following insurance:

- 5.1 (Corporate Name) shall purchase and maintain such insurance as will protect him from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage which might arise from and during operations under this contract, whether such operations be by himself or by a Subcontractor or anyone directly or indirectly employed by either of them.
- 5.2 (Corporate Name) shall not commence work under this Lease until he has obtained all insurance required herein nor until such insurance has been approved by the Owner. (Corporate Name) shall not allow any Subcontractor to commence work until the insurance required of the Subcontractor has been obtained and approved.
- 5.3 Subcontracts: (Corporate Name) shall either (1) require each Subcontractor to procure and to maintain during the life of his Subcontract, Subcontractor has General Liability and Property Damage Insurance of same type and in such manner as specified herein, or (2) Insure activities of his Subcontractors on his own policy.

- 5.4 All insurance required by this Document shall be provided by a Best "A+ VIII" rated company, or companies, authorized to do business in the Commonwealth of Massachusetts and satisfactory to the owner and shall be written for not less than any limits of liability specified herein, or required by law, whichever is greater.
- 5.5 Certificates: Certificates of Insurance acceptable to the Owner shall be submitted in triplicate to the Owner simultaneously with the execution of the Lease Agreement. Certificates shall indicate that broad form Contractual Liability coverage is in force, as well as deletions of the XCU exclusions. Certificates shall contain a provision that the insurance company will notify the Owner by registered mail at least (60) calendar days in advance of any cancellation, non-renewal, change or expiration of the policies. Certificates shall include description of coverage, effective dates and expiration dates of policies and shall clearly indicate all exclusions (other than standard policy form exclusions contained in the basic policy) which will be added to the policies provided.
- 5.6 Deductibles: In the event of paid claims, (Corporate Name) shall bear costs of any amounts deductible.
- 5.7 The Owner shall be named as additional insured under all policies.
- 5.8 Before any blasting is done, Contractor shall present evidence that blasting damage is included in his insurance coverage.

#### Coverage and Limits

##### 5.9 Workers' Compensation Insurance:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain Workers Compensation and Employers Liability Insurance in accordance with the law and regulations of the Commonwealth of Massachusetts. The limits of liability provided shall be as follows:

Coverage A:	Statutory
Coverage B:	\$500,000/\$500,000/\$500,000

##### 5.10 (Corporate Name) Liability Insurance

(Corporate Name) shall purchase and maintain Commercial General Liability Insurance and cause all subcontractors and lower tier contractors to maintain the same throughout the term of the Lease. Commercial General Liability Insurance must be included with all applicable broad form endorsements. Such insurance shall be on the 1986 standard insurance Service Office occurrence coverage form (or any later amendments or revisions thereto).

Limits of liability to be provided shall be as follows:

Bodily Injury and Property Damages	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Medical Payments	\$ 10,000

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Document. The City of Beverly must be added as an additional Insured as their interest may appear.

5.11 Business Automobile Liability:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain business automobile liability insurance covering all owned non-owned, leased, rented and hired automobiles (symbol 1). The limits of liability shall be as follows:

Bodily Injury and Property Damage: \$1,000,000 per occurrence Automobile physical damage coverage shall be at the option of (Corporate Name), all subcontractors and lower tier contractors. The Owner shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile.

The City of Beverly must be added as an additional insured as their interest may appear.

5.12. Umbrella or Excess Liability

Umbrella or Excess Liability shall be provided in excess of the primary limits of liability required above. Coverage shall be at least as broad as provided in the primary coverage required. The limits of liability to be provided shall be as follows:

\$2,000,000 per occurrence Bodily Injury and Property Damage  
\$2,000,000 per occurrence Personal Injury and Advertising Injury  
\$2,000,000 General Aggregate  
\$2,000,000 Products and Completed Operations Aggregate

Indemnification

The Contractor shall take responsibility for the work and take all precautions for preventing injuries to persons and property in or about the work and shall bear all losses resulting to it on account of amount or character of the work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all materials used or employed in carrying out the Contract. The Contractor shall assume the defense of, and indemnify and save harmless, the Designer, the Owner, and their officers and agents from all claims relating to labor performed or furnished and materials used or employed for the work: to inventions, patents and patent rights used in and in doing the work unless injuries to any person or corporation received or sustained by or from the Contractor and its employees, and subcontractors and employees, in doing the work, or in consequence of any improper materials, implements or labor used or employed therein; and to any act, omission or neglect of the Contractor and its employees therein.

Performance and Payment Bonds

If required, the Contractor shall provide the Owner with a performance bond and a labor and materials or payment bond executed by a surety company licensed by the Commonwealth of Massachusetts.

This Agreement is intended to take effect as a sealed instrument. Witness our hands and seals hereto:

Dated: \_\_\_\_\_

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE CITY

THE CONTRACTOR

\_\_\_\_\_  
Mayor                      Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Print Name & Title

APPROVED AS TO FORM ONLY AND NOT AS TO SUBSTANCE:

\_\_\_\_\_  
City Solicitor                      Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS

\_\_\_\_\_  
Finance Director                      Date

CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained 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 Required

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A  
\_\_\_\_\_, authorized signatory for  
name of signatory \_\_\_\_\_, whose  
contractor \_\_\_\_\_,  
principal place of business is at \_\_\_\_\_,  
\_\_\_\_\_ does hereby certify under the pains and penalties of perjury that  
\_\_\_\_\_ has paid all  
contractor \_\_\_\_\_  
Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Signature Required

Federal Identification No. of \_\_\_\_\_ : \_\_\_\_\_  
contractor number