

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 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: 20-020

Contact Name:

Company Name:

Address:

City/Town:

State:

Zip Code:

Phone:

Fax:

Cell:

Email:



CITY OF BEVERLY

20-020

Polyvinyl Chloride Pipe

BIDS DUE:

THURSDAY, October 29, 2020 @ 11:00 A.M.

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

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 ID #: _____

Email Address: _____

BID PRICING FORM

Note: Joints to be of rubber ring push on type in accordance with ASTM D3212.

Description	Qty	Unit	Unit Price	Extension (Qty X Unit Price)
4 Inch ASTM D3034, PVC Pipe, SDR 35	200	Lin. Ft.	\$ / lin. ft.	\$
5 Inch ASTM D3034, PVC Pipe, SDR 35	200	Lin. Ft.	\$ / lin. ft.	\$
6 Inch ASTM D3034, PVC Pipe, SDR 35	300	Lin. Ft.	\$ / lin. ft.	\$
8 Inch ASTM D3034, PVC Pipe, SDR 35	200	Lin. Ft.	\$ / lin. ft.	\$
10 Inch ASTM D3034, PVC Pipe, SDR 35	100	Lin. Ft.	\$ / lin. ft.	\$
12 Inch ASTM D3034, PVC Pipe, SDR 35	1000	Lin. Ft.	\$ / lin. ft.	\$
15 Inch ASTM D3034, PVC Pipe, SDR 35	50	Lin. Ft.	\$ / lin. ft.	\$
18 Inch Spiral Bound PVC Pipe (or smooth wall)	100	Lin. Ft.	\$ / lin. ft.	\$
21 Inch Spiral Bound PVC Pipe (or smooth wall)	50	Lin. Ft.	\$ / lin. ft.	\$
24 Inch Spiral Bound PVC Pipe (or smooth wall)	100	Lin. Ft.	\$ / lin. ft.	\$
Total				\$

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

Name of Person Signing Bid

Company

Purchasing Office
Beverly City Hall
191 Cabot Street, Beverly, MA 01915

GENERAL CONDITIONS AND INSTRUCTIONS

- 1) 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 informality in bids.
- 2) Each bid should give the full business address of the bidder and be signed by him/her with his/her usual signature. Bids by partnerships should be signed with the partnership name by one of the members of the partnership, followed by the signature and designation of the person signing. Bids by corporation should be signed with the name of the corporation followed by the signature of the person authorized to bind the matter.
- 3) Erasures or other changes in the bids must be explained or noted over the signature of the bidder.
- 4) Time, in connection with discount offered, shall be net 30 days for properly submitted invoices. Any invoices not correctly identified shall be returned to the vendor for correction.
- 5) Bids must be enclosed in a sealed envelope(s) marked to identify the bid on the outside per this solicitation, and filed in the office of the of Purchasing Agent on or before the time and place stipulated in the bid, at which time they will be publicly opened and read.
- 6) Samples of items, when required, must be submitted prior to the openings of bids at no expense to the City of Beverly. If not destroyed by testing, they will be returned at the bidder's request and expense.
- 7) A bidder has the right to withdraw his/her bid anytime prior to the time fixed for opening.
- 8) Bids must be submitted on this form, unless otherwise specified or will be considered informal.
- 9) It is agreed that if this proposal be accepted and the bidder fails to comply with the terms of his/her bid or shall fail to contract as required within the time limit specified, the City of Beverly may, at its option, determine that the bidder has abandoned his/her bid, and thereupon this proposal and acceptance thereof shall become null and void.
- 10) The successful bidder will receive copies of a contract for their signatures. After signing and returning, the Mayor will sign the contracts and one copy a will be returned to bidder as Notice of Award and will thereupon constitute a binding contract between the City of Beverly and the bidder. **NO PAYMENTS CAN BE MADE WITHOUT AN EXECUTED CONTRACT!**
- 11) Quantities indicated are the City of Beverly's best estimate for quantities that may be utilized during the contract period. The City of Beverly does not guarantee that the estimated quantity is the quantity that will be utilized during the contract period.

- 12) Where applicable, wage rates are subject to the minimum wage rates as per M.G.L., Chapter 149, section 26 to 27F inclusive.
- 13) *Minority Business Enterprises*: Minority business enterprises have full opportunity to submit Bids in response to this Advertisement and will not be discriminated against on the grounds of race, color, sex, religion or national origin in consideration for an award. All requirements of the Beverly Equal Opportunity Policy are in effect for this contract. Policy is available for viewing at the Office of the Purchasing Agent.
- 14) *Contract Award* - Award of Contract(s) shall be to the responsible and responsive bidder(s) with the best bid(s) **and if applicable** best delivery date per this solicitation. The City may award multiple contracts under this bid. The City reserves the right to award multiple contracts on a per item unit price basis.
- 15) *Contract length* - The contract shall be for one (1) year from the date of the award. This contract may be extended under the same terms and conditions for a maximum of two (2) additional one (1) year terms at the sole discretion of the City and upon approval of the appropriation.
- 16) The bidder shall provide evidence of insurance in accordance with INSURANCE REQUIREMENTS for the City of Beverly (attached if applicable) before commencing work.
- 17) Submittal requirements:
 - a) **Non-collusion and Tax Form (Bid Certification)**
 - b) **Bid Pricing Page**
 - c) Bid bonds (not applicable)
 - d) Massachusetts Highway Department Certification (not applicable)
 - e) **Two (2) Original Submittals of your Bid**
- 18) All contract awards are subject to an appropriation for the good or service that is the subject of this bid package.
- 19) Where applicable, all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration ("OSHA") that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee.
- 20) *Warranty*: Contractor shall warrant and represent to the City that the workmanship of the Work, including all materials to be provided and all other aspects regarding the Work shall be in conformance with the Contract and be free from faults and defects of design, material and workmanship for a minimum period of one year from the date of payment, or manufacturers warranty whichever is greater.



CITY OF BEVERLY
DEPARTMENT OF
PROCUREMENT & CONTRACT ADMINISTRATION

*191 Cabot Street
Beverly, Massachusetts 01915*

INSURANCE REQUIREMENTS

- A. The General Contractor 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.
- B. Contractor shall not commence work under this Contract until he has obtained all insurance required herein nor until such insurance has been approved by the Owner. Contractor shall not allow any Subcontractor to commence work until the insurance required of the Subcontractor has been obtained and approved.
- C. Subcontracts: Contractor 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.
- D. 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.
- E. Certificates: Certificates of Insurance acceptable to the Owner shall be submitted in triplicate to the Owner simultaneously with the execution of the Contract. 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.
- F. Deductibles: In the event of paid claims, Contractor shall bear costs of any amounts deductible.
- G. The Owner shall be named as additional insured under all policies.

COVERAGE AND LIMITS

- A. 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

B. Contractor's Liability Insurance

The Contractor 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 Work. Commercial General Liability Insurance must 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.

C. 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 the Contractor, 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.

D. 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.

CITY OF BEVERLY

CONTRACT

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:

In consideration for performance of the work in accordance with the requirements of this Contract, and in accordance with all applicable statutes, the City shall pay the Contractor the prices set forth in the Contractor’s Bid/submission, a copy of which is attached hereto and incorporated by reference.

This Contract is a fixed price/fixed rate contract and therefore miscellaneous expenditures associated with the Contractor’s work on this project shall not be paid by the City. In the event that an unforeseen miscellaneous expense is incurred, the Contractor shall receive the City’s approval in writing prior to incurring the expense if it will subsequently seek payment of said expense from the City.

Payment shall be made to the Contractor for work completed in accordance with this Contract. All requests for payment shall be submitted to the City as an invoice and shall specify work completed, progress made toward completing deliverables, the number of hours worked, the classification of each employee who performed work, and the billing rate for each employee who performed work on the project.

Payment will be due thirty (30) days after receipt of the Contractor's invoice by the City for services rendered in accordance with this Contract. The City shall not make payments in advance.

If the City objects to all or part of any invoice, the City shall notify the Contractor in writing within two (2) weeks of the date of receipt of the invoice, and shall pay that portion of the invoice not in dispute within thirty (30) days after the date of receipt of the invoice.

Should it be necessary for the Contractor to engage the services of a specialized contractor or companies other than those originally proposed in the Contractor's response to the City's procurement documents, the Contractor shall take such measures only with the City's prior written approval. Charges for such services, with no mark-up, shall be billed directly to the City unless otherwise agreed upon by the parties.

No payment by the City to the Contractor shall be deemed to be a waiver of any right of the City under this Contract or a ratification by the City of any breach hereof by the Contractor.

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.

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. The Contractor's Bid/Submission is also included in the Contract documents. In the event of any conflict among the Contract Documents, the Documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Contract (if any)
Second Priority:	Contract
Third Priority:	Addenda to the Procurement Documents (if any)
Fourth Priority:	Procurement Documents
Fifth Priority:	Contractor's Bid/submission.

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:

Work shall commence by the Contractor by _____. This Contract and the work of the Contractor shall be completed, 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 Accountant. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges.

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, there will be no charge to Contractor for permits issued by the City of Beverly.

8. Termination and Default:

8.1 Without Cause. The City may terminate this Contract for convenience and without cause 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. If any assignment shall be made by the Contractor or by any guarantor of the Contractor for the benefit of creditors, or if a petition is filed by the Contractor or by any guarantor of the Contractor for adjudication as a bankrupt, or for reorganization or an arrangement under any provision of the Bankruptcy Act as then in force and effect, or if an involuntary petition under any of the provisions of the Bankruptcy Act is filed against the Contractor and such involuntary petition is not discharged within ninety (90) days thereafter, in any event the City may terminate this Contract upon written notice to 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.

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.

To the fullest extent permitted by law, 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 federal 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 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 of Massachusetts or Subdivision).

13. Non-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. The Contractor shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. The previous sentence shall include, but not be limited to, the following: advertising, recruitment; hiring; rates of pay or other forms of compensation; terms; conditions or privileges of employment; employment upgrading; transfer; demotion; layoff; and termination. The Contractor shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap.

14. Assignment:

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

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 his designee; and (2) endorsed with approval by the City Accountant as to appropriation or availability of funds; (3) endorsed with approval by the City Solicitor as to form and (4) otherwise procured in accordance with all applicable federal, state, and local laws, rules, and regulations.

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 of Massachusetts.

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 boards, commissions, committees, employees, agents, subcontractors, material men, assigns 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, or for any violation of federal, state, or local statute, by-law, or ordinance 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.. 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 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 to the extent permitted by law 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 66 *et seq.* 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.

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 of Massachusetts. Any and all

proceedings or actions relating to subject matter herein shall be brought and maintained in the Essex County Superior Court in Massachusetts.

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 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/Severability:

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. If any provision, or portion thereof, of this Contract shall be adjudged to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction the remaining provisions shall continue in effect to the extent permitted by law.

28. Independent Contractor

The Contractor shall provide services under this Contract as an independent contractor with the City and not as an employee of the City. No employee, agent or representative of the Contractor shall be entitled to receive any benefits of employment with the City, including without limitation salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation.

29. Use of Alcohol and Controlled Substances Prohibited/No Smoking

The Contractor hereby acknowledges that the use of alcoholic beverages, narcotics, and mood altering substances, except for current valid, legal prescriptions, by any officer, employee, agent, or representative of the Contractor is prohibited on City property which is the subject matter of this Agreement and during all hours of work under this Agreement. If any officer, employee, agent, or representative of the Contractor violates the foregoing provision, the City shall have the right to order that such officer, employee, agent, or representative of the Contractor shall not be permitted to return to work on this Agreement. Under such circumstances, the Contractor shall promptly remove the subject officer, employee, agent, or representative from the job site and shall not permit the subject officer, employee, agent, or representative to perform further work in conjunction with this Agreement. Pursuant to Massachusetts General Laws (M.G.L.) c. 270, §22, the Commonwealth of Massachusetts Smokefree Workplace Law, the Contractor, its officers,

employees, agents, and representatives shall refrain from smoking and from using tobacco products in any public building in the City.

30. 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

