CITY OF NEWTON

PURCHASING DEPARTMENT

CONTRACT FOR PUBLIC BUILDINGS DEPARTMENT
(M.G.L. Ch. 30B, Sec. 16)

PROJECT MANUAL:

LEASE OF CITY HALL CUPOLA SPACE FOR CELL PHONE WIRELESS TRANSMITTERS

INVITATION FOR BID #15-27

(Re-Bid of IFB #15-08)

Bid Opening Date: October 23, 2014 at 10:00 a.m.

SEPTEMBER 2014

Setti D. Warren, Mayor

CITY OF NEWTON

PURCHASING DEPARTMENT

INVITATION FOR BID #15-27

The City of Newton (City) invites sealed bids from Contractors for:

LEASE OF CITY HALL CUPOLA SPACE FOR CELL PHONE WIRELESS TRANSMITTERS

Bids will be received until: **10:00 a.m., Thursday, October 23, 2014**
at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459. Bids will not be accepted nor may submitted bids be corrected, modified or withdrawn after the deadline for bids. Following the deadline for bids, all bids received within the time specified will be publicly opened and read aloud.

Contract Documents will be available on line at **www.newtonma.gov/bids** or for pickup at Newton City Hall, Room 204, Purchasing Department, 1000 Commonwealth Avenue, Newton Centre, MA 02459 after **10:00 a.m., September 18, 2014.**

There will be no charge for contract documents.

Bid surety is **not** required with this bid.

All bids must be submitted in the manner and form prescribed by the Invitation for Bid which controls award of the contract.

All bids shall be submitted as **one (1) ORIGINAL and five (5) PAPER COPIES. It is requested, but not required, that bidders submit one copy of their bids in DVD format.**

Award will be made to the highest, responsible, and responsive proposed rent for the first year of the lease term. Rent for all subsequeent years shall be 104% of the rent for each preceding year. The minimum responsive bid for the first year's annual rent is $75,000.

The term of the awarded lease shall extend from the date of execution through June 30, 2019. The City, at its sole discretion, shall have the option to renew the lease for **two (2) additional five (5) year terms**, with no change in the contract price and terms and conditions. The maximum possible term of the lease is fifteen (15) years.

All bids are subject to the provisions of M.G.L. c.30B, §16.

All City bids are available on the City's web site at **www.newtonma.gov/bids**. It is the sole responsibility of the contractor downloading these bids to ensure they have received any and all addenda prior to the bid opening. Addenda will be available online within the original bid document as well as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, you may fax the Purchasing Department (617) 796-1227 or email to purchasing@newtonma.gov with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER.

The City will reject any and all bids in accordance with the above referenced General Laws. In addition, the City reserves the right to waive minor informalities in any or all bids, or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

CITY OF NEWTON

Nicholas Read
Chief Procurement Officer
September 18, 2014

CITY OF NEWTON

DEPARTMENT OF PURCHASING

INSTRUCTIONS TO BIDDERS

The City of Newton, Massachusetts, acting by and through its Commissioner of Public Buildings and its Chief Procurement Officer (hereinafter the "City"), is seeking lessee bids for the lease of a portion of one (1) site for the siting, operation and maintenance of one or more wireless communications facilities along with co-tenants. This Invitation For Bids (IFB) is made pursuant to Massachusetts General Laws, Chapter 30B and, in particular, Section 16, pertaining to the disposition of an interest in real property.

The single site that will be shared by one or more co-tenants is as follows:

1. War Memorial Cupola: Located atop City Hall near the west entrance to City Hall accessible via Memorial Drive from Commonwealth Avenue

City Hall is located at 1000 Commonwealth Avenue, Newton, MA 02459. It is shown as Section 64, block 1, Lot 1 on Assessor's Map #72 NW. The City seeks bids for locating wireless communications equipment inside the War Memorial Cupola on City Hall so that the equipment will not be visible from the outside of the building. Storage space for related equipment is available in the attic of City Hall. No structures may be erected on City Hall property; rather, all equipment must be contained within the cupola and/or storage space provided in the City Hall attic. In addition, any cabling on the outside of the building must be properly concealed. Copies of topographic maps showing the location of City Hall and an "Elevation and Plan" for City Hall and War Memorial Cupolas are available on request. In addition, the City has posted for this IFB at **www.newtonma.gov/bids** photographs of the interior of the War Memorial Cupola.

The portions of the War Memorial Cupola that is the subject of this IFB are currently leased to and occupied by AT&T Wireless. The AT&T Wireless lease is due to expire on or about July 26, 2014.

THE DEADLINE FOR RECEIPT OF BIDS IS 10:00 AM, THURSDAY, OCTOBER 23, 2014[1].

SITE INSPECTIONS, TESTING

1. The City makes no representations of any kind with respect to the site, its adequacy to support the equipment, or the appropriateness of its use as a site for wireless communication equipment. Each bidder will be responsible for determining the adequacy of the War Memorial Cupola to support the bidder's equipment and the suitability of the site for use as a wireless communication equipment site. Interested parties will be permitted to inspect the City's plans, specifications and other records relating to the site and will have access to the site to make inspections, perform engineering surveys and tests at their own expense, subject to prior approval of the City and further subject to the rights of existing lessees with regard to the security of their facilities.

2. **Interested bidders will be able to schedule appointments to conduct testing at the War Memorial Cupola.** Please contact Robert Biswanger, City of Newton Buildings Department at (617) 796-1614, to schedule tests at the War Memorial Cupola.

3. **Insurance: A certificate of insurance must be provided to the City of Newton Law Department no less than two (2) business days in advance of the scheduled date of testing. The certificate of insurance should provide evidence of the following coverages:**

   Commercial General Liability, including Owner's and Contractor Protective Liability, in the amount of $1 million dollars per occurrence, $2 million aggregate.
   Automobile Liability, specifying all owned, hired and non-owned vehicles with bodily injury coverage in the amount of $250,000 per occurrence, $500,000 aggregate and property damage coverage in corresponding amounts.
   Workers Compensation and Employer's Liability in amounts as required by Massachusetts General Laws.

[1] Additional instructions related to the submission of bids, questions and the award of a contract are set forth in the Instructions to Bidders (hereinafter referred to as "Instructions") attached hereto as Exhibit 10.

The insurance certificate must also state the dates of coverage and the location to which the coverage applies. Persons and/or companies conducting site tests will also be required to execute a hold harmless and indemnification form and certificate of corporate authority, copies of which are attached hereto as **Exhibit No. 2** and **Exhibit No. 3**, respectively.

INSTRUCTIONS FOR SUBMITTING BIDS

4. **Compliance With Instructions.** All bids shall be submitted in accordance with the Instructions set forth in Exhibit 10.

5. **Number of Copies.** Interested parties are invited to deliver one original and five (5) copies of the bid to the Office of the Chief Procurement Officer.

6. **Form of Bids.** Bids should be clearly marked as provided in the Instructions. They shall be in the form of the Bid Form attached as Exhibit 11 and should include the annual rent for each year of an initial five (5) year term and for each year of each of the two (2) subsequent renewal terms, or a total of three (3) terms totaling fifteen (15) years. Bidders are requested to submit escalating rent such that rental payments increase each year during the lease term by an amount to be specified by the bidder in its bid, which should reflect compounding annually. The City shall retain sole discretion in the exercise of each option to renew the lease for a subsequent term.

7. **Responsive**. Each bid must satisfy all of the Submission Requirements in order to be considered for an award. A bid which does not include all of the Submission Requirements may be rejected as non-responsive.

8. **Award of Leases.** The award of a lease, if any, for the site will be made on the basis of a responsive bid submitted by a responsible bidder who offers the highest rent for the first year of the lease term. Rent for all subsequent years shall be 104% of the rent for each preceding year. The annual rent in the first year of the lease shall be a minimum of Seventy Five Thousand Dollars ($75,000Payments are due annually in advance. Note that the lease is structured for a five (5) year initial term with two (2) renewal terms of five (5) years each, and the City retains the sole discretion in the exercise of each option to renew the lease (See also the form of Lease Agreement attached hereto as **Exhibit No.4**). In the event that two (2) or more bids offer the same overall rent as determined above, the City may make an award or awards based on the nature of the proposed installation, with preference given to installations that are well-camouflaged**. The City reserves the right to reject any and all bids as determined to be in the best interests of the City.**

9. **Special Permit, Administrative Site Plan Review, Building Permit and Board of Aldermen Approval of Leases.** The award of a lease for the use of "War Memorial" cupola of the City Hall Building is subject to the Administrative Site Plan Review procedures of Ordinance Section 30-18A(h), "Wireless Communication Equipment." A copy of Section 30-18A is available on the City's website **www.newtonma.gov/bids** the City Clerk's Office. Compliance with this section of the City Ordinance will be required. Other or different permitting requirements also may apply depending upon whether a bidder already occupies the space covered by this IFB.

10. **Amendments.** The City reserves the right to amend this Invitation for Bids at any time by written notice to each bidder prior to the deadline for submission of bids, and to reject any and all bids received, as determined to be in the best interests of the City.

11. **Bidder's Obligations In Submitting Bid.** Submission of a bid shall be conclusive evidence that the bidder has examined the site and the IFB documents and is familiar with all the conditions of the proposed lease(s). Upon finding any omissions or discrepancy in the IFB documents, the bidder shall notify the Chief Procurement Officer immediately so that any necessary addenda may be issued. Failure of the bidder to completely investigate the site and/or to be thoroughly familiar with the IFB documents (including plans, specifications and all addenda) shall in no way relieve him or her from any obligation with respect to the bid.

12. **Proprietary Information.** All bids shall be deemed to be public records within the meaning of Massachusetts General Laws Chapter 4, §7 (26). If a bidder believes that the IFB requires the disclosure of technical, proprietary, or trade secret information that the bidder is not willing to make public, it may submit such information in a separate envelope, clearly marked, which will be returned to the bidder following the award of bids. No part of a bid involving the amount of rental income that the bidder is willing to pay may be designated as confidential.

13. **Permits & Licenses.** Final award of a lease is contingent upon the bidder's demonstration of compliance with all federal, state and local laws, rules and regulations and obtaining any and all required permits and licenses.

BID SUBMISSION REQUIREMENTS:

Each bidder must submit the following information as part of its bid:

14. A Letter of Transmittal signed by the individual authorized to negotiate for and contractually bind the bidder, stating that the offer is effective for at least forty-five (45) calendar days from the submission of bids, or until it is formally withdrawn, or a lease is executed, or this IFB is cancelled, whichever occurs first.

15. A description of the facility the bidder intends to install, including (1) a plan showing the location of the facility, (2) a description of other structures necessary to support or contain the equipment, including (a) a list of the proposed equipment to be installed, (b) any utility or telecommunication wires or services needed to operate the facility, and (c) any security structures proposed. Detailed plans and specifications for the proposed facility are not required. If a bidder is an existing lessee that is bidding on space that it currently occupies, the description should cover both the existing facility and any changes planned as of the inception of a new lease.

16. A statement of intent to comply with Section 30-18A of the Revised Ordinances of the City of Newton, "Wireless Communication Equipment" and other applicable law regarding the siting of its facilities.

18. A list of the locations of all wireless communication facilities the bidder has installed on municipal or state-owned property in Massachusetts over the past three (3) years, and the name, address and telephone number of the owner of the site(s). If the bidder has not yet installed facilities in Massachusetts, it may provide information about sites of comparable facilities which it has installed in other states.

19. A list of all municipalities and public bodies in Massachusetts where the bidder has either sought permission to install a wireless communication facility in the past three years, or is presently engaged in negotiating or has in the last three (3) years negotiated for a lease or permission to use a site for installation of such a facility.

20. A copy of the audited financial statements for the bidder's most recent fiscal year.

21. Completed disclosure of beneficial interest in real property transaction as required by Mass. Gen. Law, c.7, 40J. See Exhibit No. 5 attached.

22. Fully executed non-collusion certificate (See Exhibit No. 6 attached.) and Tax Attestation Form. (See Exhibit No. 7 attached.)

23. Price Bid. See Exhibit No. 8 attached. Please note the City's floor price requirement for the first year of the initial five (5) year term of a lease.

24. A copy of the bidder's RF Exposure compliance manual or written practices, including RF measurement testing practices, safety procedures, employee training, RF exposure mitigation measures (warning signs, barriers, personal monitors, other), materials provided to premises owners, and procedures for coordination with other wireless carriers where multiple carriers have wireless facilities at locations such as building rooftops and rooftop cupolas.

SUMMARY OF KEY LEASE AGREEMENT PROVISIONS:

See also copy of the *Lease Agreement* attached as Exhibit No. 4.

25. The lessee shall not be permitted to begin construction or installation of equipment before executing a *Lease Agreement* in substantially the form of Exhibit No. 4 and obtaining all necessary permits and approvals as further provided in this IFB.

26. The initial term of the Lease shall be five years commencing on the date of execution of a Lease Agreement, with successive options for renewal for up to two (2) additional five-year terms, in accordance with the terms of the Lease Agreement. *The City shall retain sole discretion in the exercise of each option to extend the Lease Agreement term, as required by M.G.L. c.30B.*

27. Rental payments due under the Lease Agreement shall increase each year during the initial Lease Agreement term and shall increase each year during each of the renewal terms, if exercised, by an amount to be specified by the lessee in the bid. Rent shall be payable annually in advance.

28. The lessee shall maintain insurance satisfactory to the City covering the facility as required in the Lease Agreement and shall hold harmless and indemnify the City for any damages arising from construction or use of the facility.

29. The City or agents of the City may, at reasonable times, upon reasonable prior notice to the lessee, enter to view the Leased Premises. In the event of an emergency or perceived emergency, the City may enter to make repairs or to inspect without prior notice to the lessee. Annually, the City shall conduct an inspection of the Leased Premises.

30. The lessee shall have a right of access to the Leased Premises at all times during City business hours and after hours ("emergency access") per arrangement with the Commissioner of Public Buildings as further provided herein. For purposes of the Lease Agreement, normal business hours shall be defined as five days a week, Monday through Friday, from 8:30 a.m. to 5:00 p.m. (excepting City holidays). Access to City Hall during City business hours shall be in accordance with procedures established by the City acting through its Commissioner of Public Buildings.

31. For purposes of the Lease Agreement, "emergency access" is defined as access at any time outside the normal business hours as defined in the Lease Agreement. The lessee shall have twenty-four hour access to the Leased Premises in the event of an emergency, *provided, however, that lessee must be accompanied by City of Newton personnel for emergency access and provided that lessee shall be responsible for paying any overtime or other costs incurred by the City in connection with facilitating lessee's emergency access to the Leased Premises*. "Emergency access" to City Hall shall be in accordance with procedures established by the City acting through its Commissioner of Public Buildings, which shall be incorporated into the terms of the Lease Agreement.

32. The lessee agrees and shall ensure that the installation of its equipment and its use will not interfere with the use of the City's property for any purpose for which the site is being used at the commencement of the Lease. The lessee shall also agree that its use of the site will not interfere with use of the site for wireless communication equipment by the City or by other lessees and will make such changes or modifications to its equipment as may be required by the City to eliminate or minimize such interference; provided, however, that any lessee of the site shall be entitled to be reimbursed by a subsequent lessee for any costs incurred in relocating or modifying its equipment to eliminate interference with equipment installed by such subsequent lessee.

33. The lessee shall obtain all permits, licenses, and approvals, (collectively, "permits"), from the United States, the Commonwealth of Massachusetts, and the City which are necessary for the location, installation and operation of its wireless facilities. The award of a lease pursuant to this IFB shall be expressly contingent upon the lessee's ability to obtain all such required permits. The lessee shall furnish the City with copies of such permits before commencing construction or installation of equipment at the site, provided, however, that in the case of a permit that cannot be obtained until a lease for the site has been awarded, then the lessee may present a copy of such permit as soon as practicable, and, in any event, before commencing operation at the site. Without limiting the foregoing, this IFB does not represent approval or exemption of the facility from the City's building or zoning ordinances and the lessee is responsible for obtaining all necessary permits thereunder. The lessee shall comply with all statutes, regulations and ordinances relating to the maintenance and operation of the facility.

34. The lessee shall be responsible for making any necessary returns for and paying any and all other property taxes separately levied or assessed against the improvements constructed by the lessee on the Leased Premises.

35. At the end of the Lease period, the lessee shall remove all personal property and equipment installed at the site, including any utility connections, and shall restore the site to its pre-existing condition. Such removal shall be completed upon the expiration of the Lease period. If the City does not require removal of all personal property including utility connections installed by the lessee, it may require the lessee to transfer title of such property and connections to the City by appropriate written documentation.

36. The lessee shall have a separate power meter installed for its electric service and the lessee shall pay all costs related to said electrical service. The cost of obtaining and maintaining such electric service to the Leased Premises shall be paid by the lessee. The City shall cooperate with the lessee in any effort by the lessee to obtain such electric service as may be necessary in connection with the operation of lessee's wireless communication equipment.

37. The lessee shall comply with all state and federal laws regarding radio frequency radiation emissions, testing in multi carrier environments, disclosures, safety measures and mitigation measures as related to controlled and uncontrolled areas, as defined by the FCC. The lessee shall cooperate with the City to develop, together with other wireless lessees, a joint plan for compliance with RF exposure standards and safety measures within the War Memorial Cupola and City Hall.

LIST OF EXHIBITS
IFB NO. 15-27
LEASE OF CITY HALL CUPOLA SPACE FOR CELL PHONE WIRELESS TRANSMITTERS

Exhibit No. 1 "Elevation and Plan" for the City Hall Cupola

Exhibit No. 2 Hold Harmless Agreement

Exhibit No. 3 Certificate of Corporate Authority

Exhibit No. 4 Lease Agreement

Exhibit No. 5 Disclosure of Beneficial Interests in Real Property Transactions

Exhibit No. 6 Non-Collusion Certificate, Chapter 30B

Exhibit No. 7 Tax Attestation Form

Exhibit No. 8 Price Bid Form

Exhibit No. 9 Ordinance Section 30-18A

Exhibit No. 10 Additional Instructions to Bidders

Exhibit No. 11 Bidders Qualifications, Debarment Letter, & W-9 Form

Exhibit No. 1 “Elevation and Plan” for the City Hall Cupola

[Provided on Request]

Exhibit No. 2

HOLD HARMLESS AGREEMENT

_____(hereinafter "the Company") shall indemnify, defend and hold harmless the City of Newton, and its officers, boards, committees, and employees, from and against any and all claims, suits, actions, legal or administrative proceedings, damages, liabilities, attorney fees, costs, and expenses arising from the act(s) or omissions(s) of the Company, or anyone acting under its direction, control or on its behalf in connection with the site visit and inspection being performed at _____(one of the City owned parcels) on _____(date) and from (hours of site view.) The foregoing indemnity and hold harmless agreement shall not apply to any liability caused by the acts, omissions, fault or negligence of the City of Newton or anyone acting under its direction, control or its behalf.

NAME OF COMPANY

_____

(Signature)

_____

Name and title of person signing (please type or print)

Exhibit No. 3

CERTIFICATE OF CORPORATE AUTHORITY

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)

2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds**.)

3. is the duly elected _____
(insert the title of the officer in line 2)

4. of said corporation, and that on _____
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds**.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ *AFFIX CORPORATE SEAL HERE*
(Signature of **Clerk or Secretary**)*

7. Name: _____
(Please print or type name in line 6)*

8. Date: _____
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds**.)

* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.

Exhibit No. 4 Lease Agreement

LEASE AGREEMENT #L-

1. **Parties**. This LEASE, made this ____ day of _____, 2014, by and between the City of Newton, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, with a mailing address of City Hall, 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through its Mayor, but without personal liability to him, hereinafter the "LESSOR" or the "City" and , a corporation with a usual business address of , hereinafter "LESSEE".

2. **Definitions**. As used herein, the terms "wireless communication equipment", "antenna"; "building mounted wireless communication equipment"; "facade-mounted wireless communication equipment"; "interior-mounted wireless communication equipment"; "roof-mounted wireless communication equipment"; and "satellite earth station antenna" shall be as defined in Section 30-18A of the Revised Ordinances of the City of Newton, as may be amended from time to time during the term of this Lease.

3. Lease of Property.

a. The LESSOR hereby leases to LESSEE the Property, consisting of portions of the City Hall Cupola at City Hall as shown on the Plan attached hereto and incorporated herein as **Exhibit A**, hereinafter, "the Leased Premises".

b. The LESSEE shall have a ***non-exclusive*** right and easement to the Leased Premises during normal business hours, as hereinafter defined, for ingress and egress, on foot or motor vehicle, including trucks, for the installation and maintenance of wireless communication equipment. LESSEE shall also have emergency access to the Leased Premises as further provided in paragraph 4 of this Lease.

4. Access and Contacts

a. LESSEE shall have access to the Leased Premises during normal business hours of the City of Newton. For purposes of this Lease, normal business hours shall be defined as five days a week, Monday through Friday, from 8:30 a.m. to 5:00 p.m. Access to City Hall and the Leased Premises shall be in accordance with procedures established by the City acting through its Commissioner of Public Buildings.

b. LESSEE shall have emergency access to the Leased Premises. For purposes of this Lease Agreement, "emergency access" is defined as access at any time outside the normal business hours as defined in paragraph 4 a. The LESSEE shall have twenty-four hour access to the Leased Premises in the event of an emergency, *provided, however, that LESSEE must be accompanied by City of Newton personnel for emergency access and provided that LESSEE shall be responsible for paying any overtime or other costs incurred by the City in connection with facilitating LESSEE's emergency access to the Leased Premises*. "Emergency access" to City Hall shall be in accordance with procedures established by the City acting through its Commissioner of Public Buildings.

c. LESSEE designates the following contacts for use by the LESSOR in connection with any operational matters relating to or arising out of this Lease Agreement:

In the event that LESSEE relies upon outside contractors to perform any services on its behalf in connection with this Lease Agreement, LESSEE shall provide to LESSOR prior written notice of the contractor involved and the scope of its authority to act on behalf of LESSEE.

5. Lease Term and Rental.

a. The Initial Term of this Lease shall be for a period of five (5) years beginning on the date of execution hereof. The rent for the first year shall be $ to be paid in advance. **Rent shall be paid by check made payable to the City of Newton and mailed or hand-delivered to**:
Treasurer-Collector
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

b. Rent Escalation: The rent shall increase every year as of the anniversary date of the Lease , including any extensions, in an amount equal to 104% of the rent paid in the immediately preceding year.

c. Extension of Term. The LESSOR shall have the option to extend the term the term of this Lease Agreement for two additional (successive) five-year terms. The LESSOR shall retain sole discretion in the exercise of each option to extend.

6. **Electric Service**. During the Initial Term of this Lease Agreement and any extension thereof, LESSOR shall cooperate with LESSEE in any effort by the LESSEE to obtain such electric service as may be necessary in connection with the operation of LESSEE's wireless communication equipment. The cost of obtaining and maintaining such electric service to the Leased Premises shall be paid by the LESSEE. LESSEE shall have a separate electric distribution company meter installed for its electric service in a location accessible to the electric distribution company for purposes or meter reading, meter maintenance and meter replacement, and LESSEE shall pay all costs related to said electrical service.

7. **Co-Locators and Non-Interference.**

a. The LESSEE acknowledges and agrees that this Lease Agreement is *non-exclusive*, and, as such, the LESSOR maintains the right to co-locate LESSOR's wireless communication equipment on the Leased Premises, and/or to execute such additional leases with other interested parties who wish to co-locate such wireless communication equipment on the Leased Premises as may be feasible. In particular, the LESSEE acknowledges that LESSOR has also executed Lease Agreements with , MetroPCS, Sprint, T-Mobile and Verizon Wireless. for portions of the War Memorial Cupola at Newton City Hall. The LESSEE agrees and shall ensure that the installation and use of its wireless communication equipment will not interfere with the LESSOR's use of the Leased Premises for any purpose for which the LESSOR is using the Leased Premises at the commencement of the Lease Agreement, or any similar purpose for which LESSOR may use the Leased Premises during the term of this Lease Agreement or any extension thereof and that it will use commercially reasonable efforts to ensure that LESSEE's use of the Leased Premises will not interfere with use of the Leased Premises for wireless communication equipment by MetroPCS, Sprint, T-Mobile and Verizon Wireless. LESSEE further agrees that in the event that LESSOR's Lease Agreement with AT&T, MetroPCS, Sprint, T-Mobile and Verizon Wireless.is terminated for any reason LESSOR retains the right to execute lease agreement(s) with any other interested party who offers to lease the Cupola of City Hall for wireless communication equipment.

8. **Use.**

a. LESSEE shall use the Leased Premises for the purpose of constructing, maintaining, repairing, replacing and operating wireless communication equipment, as further described in **Exhibit C** attached hereto and incorporated herein.

b. LESSEE shall provide LESSOR with updates of as-built drawings of its facilities and their locations within the Leased Premises within twenty (20) days of any change or addition to LESSEE'S facilities or the location of such facilities.

No structures may be erected on City Hall property, rather, all equipment must be contained within the cupolas and storage space provided in the attic or such other space as approved by the City. In addition, any cabling on the outside of the building must be properly concealed.

c. LESSOR grants the LESSEE the right to use such portions of LESSOR's property as is reasonably required for the construction, installation, maintenance, and operation of LESSEE's wireless communication equipment including (1) the right of ingress, egress, and regress to and from the Leased Premises for construction machinery and equipment, (2) the right to use such portions of LESSOR's land as are reasonably necessary for storage of construction materials and equipment during installation of wireless communication equipment or construction of an associated storage facility within City Hall. LESSEE shall maintain the Leased Premises and all of the LESSEE's improvements on the Leased Premises in a reasonable condition.

d. LESSEE's right to use the Leased Premises is contingent upon LESSEE's obtaining, at its own expense, all of the certificates, permits, licenses and approvals that may be required by federal, state and local officials ("Governmental Approvals") for LESSEE to use the Leased Premises for the uses permitted under Sections 8(a) and 8 (c) above.

e. LESSEE shall notify LESSOR of receipt of all Governmental Approvals and provide LESSOR with a true copy of each within ten (10) business days after receipt by LESSEE. Throughout the term and any extension thereof LESSEE shall provide LESSOR with a copy of all licenses and permits issued by the Federal Communications Commission with respect to the above-permitted uses and the LESSEE's facilities at the Leased Premises.

9. **Maintenance; Alteration, Replacement or Addition of Equipment**

a. LESSEE shall properly maintain the wireless communication equipment in good order and working condition, keeping in continuous full compliance with all federal, state and local laws, rules, and regulations, including Part 17 of the Federal Communications Commission Rules and regulations and any future amendments thereto. The LESSEE shall maintain the Leased Premises in at least the same condition as they were prior to the installation of LESSEE's wireless communication equipment, reasonable wear and tear accepted. Any alterations or

improvements shall be at LESSEE's sole cost and expense, shall be in quality at least equal to the existing condition of the Leased Premises and shall conform to all statutory, regulatory, and ordinance requirements. Prior to making any alterations, replacements, additions or improvements, LESSEE shall obtain the LESSOR's consent, which shall not be unreasonable withheld or delayed. Such consent must be preceded by (1) LESSEE's review of any proposed work with City departments, which may include one or more of the Inspectional Services Department ("ISD"), Planning and Development Department, Public Buildings Department, Fire Department and Law Department; (2) obtaining an ISD sign-off that the proposed work falls within pre-existing permits granted to the LESSEE; (3) if, applicable, submission and approval of an Application for Administrative Site Plan Review and building permit; or (4) if applicable, submission and approval of an application for a special permit. Upon request by a City Department, LESSEE shall meet with representatives of the City to review LESSEE's plans prior to the submission of request for consent in order to determine what, if any permits must be obtained before consent can be given by the City.

b. The LESSEE, except with the reasonable consent of the LESSOR, shall not permit any mechanics' liens, or similar liens, to remain upon the Leased Premises for labor and material furnished to the LESSEE or claimed to have been furnished to the LESSEE in connection with work of any character performed or claimed to have been performed at the direction of the LESSEE and shall cause any such lien to be released of record forthwith without cost to the LESSOR. Any material alterations or improvements made by the LESSEE and allowed as permanent by the LESSOR shall become the property of the LESSOR at the termination of occupancy as provided herein. Whether such alterations shall be allowed as permanent or shall be required to be removed at the end of the Lease term shall be the LESSOR's sole reasonable decision.

c. Annually or upon written request of LESSOR where time or changed conditions may have impacted the physical condition of the Leased Premises, LESSEE shall provide LESSOR with a written report within thirty (30) days of such request on the condition of the Leased Premises. Without limiting the foregoing, LESSEE shall notify LESSOR immediately upon learning of any damage and/or other condition that materially impairs the structural integrity of the Leased Premises, the Site, or both, or that threatens to interfere with the use of the Leased Premises for permitted uses.

10. **LESSOR's Access.** The LESSOR or agents of the LESSOR may, at reasonable times, upon reasonable prior notice to the LESSEE, enter to view the Leased Premises. In the event of an emergency or perceived emergency, the LESSOR may enter the Leased Premises and take any action with respect to the Leased Premises required in order to make the Leased Premises safe, and/or to inspect the Leased Premises without prior notice to the LESSEE. Annually, the LESSOR shall conduct an inspection of the Leased Premises.

11. **Hazardous Materials.** LESSEE shall not use, store or dispose of hazardous materials, as defined by federal statute, Massachusetts General Laws Chapter 21E, and federal and Massachusetts regulations, as now if effect or as amended during the term(s) of this Lease Agreement.

12. **Radio Frequency Exposure.** LESSEE shall provide to LESSOR at the time of execution of this Lease Agreement its current RF exposure compliance and safety procedures. LESSEE shall prepare and execute a written Radio Frequency Energy Exposure Management Plan in cooperation with LESSOR and, to the extent reasonably practicable, other wireless service provider tenants at the site within thirty (30) days after the date of execution of this Lease Agreement. LESSEE shall comply with governmental requirements regarding radio frequency exposure safety measures, including the posting of signage, imposing limitations on access to the Leased Premises by employees, contractors and other persons, taking necessary action to prevent or minimize worker radio frequency exposure and creating barriers to access consistent with such requirements, the other terms of this Lease Agreement and with the consent of the LESSOR. LESSEE shall furnish to LESSOR annual proof of performance tests conducted by or on behalf of LESSEE. At the inception of the lease and each year thereafter, LESSEE shall, together with other wireless service provider tenants (to the extent practicable), provide LESSOR with (1) information on the level, if any, of radio frequency exposure to members of the public and City employees at City Hall who do not access the Leased Premises; and (2) maximum theoretical and maximum measured radio frequency exposure levels arising out of the combined operations of LESSEE and such other tenants. Upon request of LESSOR, LESSEE shall provide a certification from its insurance carrier that such carrier's coverage includes claims for personal injury or death arising out of radio frequency exposure and provide to LESSOR the insurance policy that covers this risk of loss; provided, however, if LESSEE cannot obtain such certification from its insurance carrier with commercially practicable rates and terms, LESSEE shall notify LESSOR and provide a detailed factual explanation why such coverage is commercially impracticable. LESSEE shall meet with LESSOR at least annually to discuss radio frequency exposure issues, including but not limited to best practices to mitigate radio frequency exposure, training of workers with access to the Cupola, current FCC requirements and insurance issues.

13. **Taxes.** LESSEE shall be responsible for making any necessary returns for and paying any and all other property taxes separately levied or assessed against the improvements constructed by LESSEE on the Leased Premises.

14. Indemnification. The LESSEE shall indemnify, hold harmless and defend the LESSOR against any and all claims, damages, suits or causes of action for damages arising after the commencement of this Lease and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained by any person or persons whatever in or about the Leased Premises arising out of LESSEE's use of the Leased Premises. It is the intention and agreement of the parties hereto that the LESSOR, its officers, boards, committees, agents, servants and employees shall not be liable for any personal injuries to the LESSEE or its officers, agents, employees, or invitees or to any other person entering the Leased Premises, or for any injury to any property of the LESSEE, its officers, agents, employees, or invitees, or any property on any part of the Leased Premises, irrespective of how said damage or injury was caused whether from actions of the LESSEE or any other person, except that damage arising from a provable omission, fault, negligence or other misconduct of the LESSOR in or about the Leased Premises shall remain the responsibility of the LESSOR. LESSEE shall promptly notify LESSOR of any claim or proceeding brought against LESSEE in connection with LESSEE's operations on the Leased Premises and agrees to undertake forthwith to defend such action or proceeding, at LESSEE's own cost and expense, and hold the LESSOR harmless and indemnify the LESSOR against any liability thereon which may be asserted and imposed.

15. Insurance.

a. Liability Insurance. With respect to the Leased Premises and any adjacent property owned by the LESSOR and used by the LESSEE for ingress and egress to the Leased Premises, the LESSEE shall maintain at all times during the term of this Lease Agreement or any extension thereof, at its own expense and cost, commercial public liability insurance which shall include the broad form commercial general liability against injury to persons or damage to property insuring LESSEE and LESSOR as an additional named insured, against any claim of liability arising out of LESSEE's use or occupancy of the Leased Premises. Such insurance shall further provide coverage in the minimum amount of two million dollars ($2,000,000) and shall be issued by a responsible company in good standing in the state of its incorporation and in any state in which said company in licensed to do business.

b. Fire Insurance. The LESSEE shall, at all times during the term of this Lease Agreement or any extension thereof, at its own expense and cost, maintain insurance for the Leased Premises and all wireless communication equipment, which insurance shall provide protection against fire and the risks covered by: (i) the usual extended coverage endorsement; (ii) vandalism endorsement; and (iii) the so-called "all risk" endorsement. The minimum amount of fire insurance shall be the full replacement value of the Leased Premises. The LESSEE shall not permit any use of the Leased Premises which will make voidable any insurance on the Leased Premises or its contents or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or a similar body succeeding to its powers. The LESSEE shall on demand reimburse the LESSOR all extra insurance premiums caused by the LESSEE's use of the premises.

c. Certificates of such insurance shall be delivered to LESSOR at or prior to the commencement date of the Lease, and certificates of renewals or replacements thereafter shall be furnished to LESSOR prior to the expiration date of each such insurance policy. All such policies of insurance shall contain an endorsement that they may not for any reason be cancelled or terminated for failure or refusal to renew by the insurance company or by LESSEE, except only if the insurance companies issuing such policies shall notify the LESSOR in writing by certified or registered mail no less than ten (10) days prior to the effective date of such proposed cancellation, termination or failure or refusal to renew.

d. In the event that any such policy is proposed to be terminated, not renewed or otherwise cancelled for any reason whatsoever, by the insurance company or the LESSEE, the LESSEE shall also immediately and prior to the effective date of such termination, cancellation or non-renewal provide equivalent substitute policies in like qualified companies and in like amounts to the LESSOR. Upon failure to so provide such substitute policies the LESSOR may secure equivalent insurance coverage and the LESSEE shall, upon demand, pay the total premium charges thereon either directly to the insurance companies or reimburse the LESSOR for the premiums if paid by the LESSOR.

16. Fire and Casualty.

a. In the event of damage or destruction of any portion of the Leased Premises by any casualty that occurs in connection with LESSEE's use of the Leased Premises, all sums payable under policies of insurance with respect to such damage ("Insurance Proceeds"), must first be applied by the LESSEE for restoration of the Cupola and any other portion(s) of City Hall premises damaged, second to any personal property of the City of Newton damaged as a result of such casualty, third to the restoration or replacement of any lost or damaged personal property of the LESSEE, fourth to reimburse the LESSEE for the cost of insurance, fifth any remaining proceeds to be retained by the LESSEE for the future repair and maintenance of the Leased Premises, and sixth, any remainder to be paid to the LESSOR. LESSEE shall make the Insurance Proceeds available for the purposes specified herein. Any portion of the Insurance Proceeds not used to restore or rebuild the structures on the Leased Premises shall be paid over to the LESSOR.

b. When such fire or casualty renders the Leased Premises substantially unsuitable for their intended use, the LESSEE may elect to terminate this Lease. LESSEE may terminate this Lease by giving written notice to the LESSOR of its intention so to do within thirty (30) days after the date of such damage or destruction, provided such notice shall be accompanied by the payment or assignment to the LESSOR of LESSEE's interest in the Insurance Proceeds recovered or recoverable as a result of such casualty.

c. If LESSEE fails to notify the LESSOR of its intention to terminate the Lease as specified in the immediately preceding paragraph, or fails to restore the Leased Premises to its prior condition within ninety days of said damage, Lessor may terminate this Lease.

17. Eminent Domain. If the entire Leased Premises shall be taken by right of eminent domain, the Lease shall terminate as of the time that possession is required by the taking authority. If only part of the Leased Premises shall be so taken by right of eminent domain, then if the part so taken renders the remaining premises unfit or unsuitable for continued use and occupancy, or if the Leased Premises cannot, in the reasonable judgment of LESSOR, be restored not later than ninety (90) days after possession, LESSOR may terminate this Lease. LESSOR reserves and the LESSEE grants to the LESSOR all rights which the LESSEE may have for damages or injury to the Leased Premises for any taking by eminent domain, except for damage to the LESSEE's fixtures, property, or equipment.

19. Default and Bankruptcy.

a. In the event that: (1) the LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after receipt of written notice thereof; or (2) the LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements, or obligations hereunder or of any term, condition or provision or any permit, license or other like approval required for the operation of LESSEE's wireless communication equipment, and such default shall not be corrected within thirty (30) days after written notice thereof; or, (3) the LESSEE shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of LESSEE's property for the benefit of creditors, then the LESSOR shall have the right thereafter to re-enter and take complete possession of the Leased Premises, to declare the term of this Lease ended, and remove the LESSEE's effects, without prejudice to any remedies which might be otherwise used for arrears of rent or other default.

b. The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term. If the LESSEE shall default, in the observance or performance of any conditions or covenants on the LESSEE's part to be observed or performed under or by virtue of any of the provisions in this Lease, then the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditure or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations insured, with interest at the rate of eight (8%) percent per annum and costs, shall be paid to the LESSOR by the LESSEE as additional rent. LESSOR shall give LESSEE sixty (60) days' notice before any interest shall be charged.

20. Termination. LESSEE: In the event that (a) any of the certificates, permits, licenses, or other approvals required by any federal state, and local authorities issued to LESSEE is cancelled, expires, lapses, or is otherwise withdrawn or terminated by government authority so the LESSEE in its sole discretion determines that it will be unable to use the Leased Premises for its intended purposes; or (b) LESSEE reasonably determines that the Leased Premises has become unsuitable for LESSEE's facility due to subsequent changes in system or network design, then in such event LESSEE shall have the right to terminate this Agreement by written notice. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR by certified mail, return receipt requested, and shall be effective thirty (30) days thereafter. All rentals paid to LESSOR as of said effective date of termination, shall be kept by LESSOR and this Agreement shall become null and void and the parties shall have no further obligations, including the payment of money to each other.

21. Surrender. The LESSEE shall at the expiration or other termination of this Lease remove all the LESSEE's goods and effects from the Leased Premises, either inside or outside the Leased Premises and all alterations not accepted by LESSOR as permanent in accordance with Paragraph 11 b. above, including, without hereby limiting the generality of the foregoing, all improvements, fixtures and personal property constructed or installed on the Leased Premises by LESSEE, including panels, equipment building, radio, electronic, and/or electric equipment, cables, wire, and coax. The LESSEE shall deliver to the Lessor the leased premises and all keys, locks thereto, if any, and other fixtures connected therewith and all allowed permanent alterations and additions made to or upon the Leased Premises, in good condition, damage by fire or other casualty, reasonable wear and tear, takings by eminent domain and damage properly attributable to the Lessor only excepted. In the event of the LESSEE's failure to remove any of the LESSEE's property from the premises, the LESSOR is hereby authorized, without liability to LESSEE for loss or damage thereto, and at the sole risk of the

LESSEE, to remove and store any of the property at the LESSEE's expense, or to retain same under the LESSOR's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

22. **Assignment**. This Agreement may be assigned or transferred at any time to LESSEE's successors, affiliates or subsidiaries only upon the written consent of the LESSOR, which consent shall not be unreasonably withheld or delayed. Such successors, affiliates, or subsidiaries shall meet all provisions of this Agreement. No other assignments will be permitted.

23. **Amendment.** No Lease revision shall be valid unless made in writing and signed by a duly authorized agent of LESSEE and the LESSOR acting by and through its Mayor. No provision may be waived except in a writing signed by the Mayor when such waiver is on behalf of the LESSOR and a duly authorized signatory of the LESSEE.

24. **Severability.** If any term or condition of this Lease Agreement be held unenforceable, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision were not contained herein.

25. **Governing Law.** This Lease Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Massachusetts. No litigation concerning this Lease Agreement and the performance thereof, shall be conducted in, or removed to any federal district court, and shall be brought only in a Massachusetts state court.

26. **Service of Process.** LESSEE's agent is authorized to receive Service of Process on behalf of LESSEE, with respect to any matter related to this Agreement and the performance thereof.

27. **Notice of Lease.** LESSOR agrees to execute a Notice of Lease pursuant to G.L. c. 183, §4, to be prepared by LESSEE, which Notice may be recorded by LESSEE at its expense. Immediately upon recording a copy shall be sent to the LESSOR.

28. **Notices.** All notices must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice) and shall be deemed received as of the earlier of five days after the date of the postmark or actually receipt thereof:
TO LESSOR:

City Solicitor
City of Newton Law Department
1000 Commonwealth Avenue
Newton Centre, MA 02459

TO LESSEE:

LESSEE'S LOCAL AGENT FOR SERVICE OF PROCESS:

29. **No Personal Liability.** No official or employee of LESSOR shall be personally liable as a result of any default by LESSOR under this Lease Agreement or as a result of any conduct by such official or employee arising under or in connection with this Lease Agreement. **[REVIEW FOR SUFFICIENCY]**

30. **Entire Agreement.** This Agreement contains all the agreements, promises and understanding between the LESSOR and LESSEE an no oral agreements, promises or understandings shall be binding upon either the LESSOR or LESSEE in any disputes, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respected seals this _____day of_____, 2014.

LESSOR: City of Newton

_____

Setti Warren, Mayor

LESSEE:
By:_____

_____

Name & Title

WITNESS:
By:_____

_____

Name & Title

Approved as to form:

_____

City Solicitor

_____

Date

Disclosure of Beneficial Interests in Real Property Transaction

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: _____
   (Name of jurisdiction)

2. Complete legal description of the property:

3. Type of transaction: ☐ Sale ☐ Lease or rental for _____ (term):

4. Seller(s) or Lessor(s): _____

   Purchaser(s) or Lessee(s): _____

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need* ***not*** *be disclosed.*

Name	Address

(Continued on next page)

5. Continued

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Printed name: _____

Title: _____

Date: _____

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Exhibit No. 6

Non-Collusion Certificate, Chapter 30B

CERTIFICATE OF NON-COLLUSION

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

_____
Name of person signing bid or bid

_____
Name of Business Entity (if any)

_____

Date

Exhibit No. 7

TAX ATTESTATION FORM

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and contractors, and withholding and remitting child support.*

_____
**Signature of Individual
or Corporate Contractor (Mandatory)

_____
*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

Print Name:_____

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

Print Name:_____

* The provision in this Certification relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.

*** Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

Exhibit No. 8

Price Bid Form
IFB #15-27 - Lease of City Hall Cupola Space for Cell Phone Wireless Transmitters

Annual Rent Payment For Year One

Bidder acknowledges the following Addenda _____, _____, _____,.

BIDDER:

Date _____ _____
(Name of Bidder)

BY: _____

_____
(Printed Name and Title of Signatory)

_____
(Business Address)

_____
(City, State Zip)

_____
(Telephone & FAX)

_____
(E-mail address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

Exhibit No. 9

Sec. 30-18A. Wireless communication equipment.

(a) *Purpose.* The purpose of this section is to accommodate the communications needs of the general public in the city while protecting the public safety, and general welfare of the community by minimizing the adverse visual effects of wireless communication equipment towers, facilities and devices, by providing safeguards for the general public, by avoiding potential damage to adjacent properties, and by maximizing the use of existing towers and buildings, by concealing new equipment within or on existing towers or buildings, and by encouraging co-location of equipment to accommodate the needs of wireless communication in order to reduce the number of towers needed to serve the community.

Newton Ordinances On-Line – Chapter 30 – page 84

Ordinance

(b) *Definitions*. These definitions are to be used for purposes of section 30-18A.

Wireless communication equipment shall mean any device or other apparatus, fixed at a location, for transmission and reception of telecommunication that performs the function of antennas, together with any supporting structures, equipment and facilities ancillary and/or accessory thereto, including, but not limited to, panel antennas, whip antennas, free-standing monopoles (not lattice shaped towers except as allowed in subsection (d)(2) below), dish and cone shaped antennas, satellite earth station antennas, personal wireless communication systems facilities, paging service facilities, cellular telephone service facilities, mobile radio service facilities and related equipment boxes.

Wireless Mesh Network: a comprehensive wireless communication network comprised of wireless communication equipment consisting of multiple peer radio access points or repeaters small enough to be mounted on the arm of existing municipal light or power poles, as allowed by the review process under Section 30-18A(g).

An *antenna* is a device, usually a metal rod, dish or panel, for receiving and transmitting electromagnetic signals, including, but not limited to radio, video, telephone or data transmissions.

Building-mounted wireless communication equipment is comprised of roof-mounted and facade-mounted wireless communication equipment.

Facade-mounted wireless communication equipment is wireless communication equipment attached to a vertical wall, exterior surface or ornamental feature other than the roof of a building or structure.

Interior-mounted wireless communication equipment is wireless communication equipment that is wholly within a building or structure, including such equipment within a mechanical penthouse, steeples, bell towers, cupolas or other architectural features which are not completely enclosed.

Roof-mounted wireless communication equipment is wireless communication equipment attached to the primary roof of the building.

Satellite earth station antenna is an antenna intended for transmission or reception of communications to or from one or more other satellite earth stations by means of one or more reflecting satellites.

(c) *Design and Operating Criteria*. All wireless communication equipment, except that described in subsections (d)(1) and (d)(7), must satisfy the following criteria and the applicable procedures of subsections (f) or (g) hereof:

(1) Wireless communication equipment shall be installed, erected, maintained and used in compliance with all applicable federal and state laws and regulations, including, but not limited to, radio frequency emissions regulations issued pursuant to the Telecommunications Act of 1996 including all successors to such laws and regulations. An applicant seeking to construct or install wireless communication equipment shall submit a report from a qualified engineer or other appropriate professional certifying that the proposed equipment meets the requirements of these regulations. This report shall be submitted prior to any administrative review, site plan approval or special permit application or at the time of a building permit application if there is no such review.

(2) Wireless communication equipment must at all times be maintained in good and safe condition and comply with all applicable FCC standards and shall be removed within thirty (30) days of the date when all use of such equipment ceases. This provision shall apply to all wireless communication

equipment and structures in support of that equipment, including such equipment and structures existing on the effective date of this section. Continued compliance with these conditions shall be maintained by the operator of the equipment and the owner of the structure. Failure to comply with these conditions shall constitute a zoning violation.

(3) All wireless communication equipment shall be sited, screened and/or painted or otherwise colored or finished to blend in with the building or structure on which it is mounted or in a manner which aesthetically minimizes the visibility of the devices in the surrounding landscape or on the building or structure to which they are attached. In certain circumstances, additional architectural features or changes to the facade may be necessary to maintain the balance and integrity of the design of the building or structure with building-mounted wireless communication equipment.

(4) Any fencing used to control access to wireless communication equipment shall be compatible with the visual character of the structures in the surrounding neighborhood to the extent possible.

(5) Equipment boxes for building-mounted wireless communication equipment must be either interior to the building on which it is located, completely camouflaged, and/or completely screened from view from the public way.

(6) All free-standing wireless communication equipment must meet any setback requirements for the district in which it is located and, to the greatest extent possible, shall be screened from the public way by fencing and/or landscaping. Such equipment shall be located in the rear yard of the lot on which it is located.

(7) No part of any building-mounted wireless communication equipment shall be located over a public way.

(8) The construction of wireless communication equipment shall avoid major topographic changes and shall minimize the removal of trees and soil in order for any topographic changes to be in keeping with the appearance of neighboring properties.

(9) The installation of wireless communication equipment shall avoid the removal or disruption of historic resources on and off-site. Historic resources shall include designated historic structures or sites, historical architectural elements or archaeological sites and shall comply with the requirements of the historic district and the landmark preservation ordinances.

(10) There shall be no illumination of the wireless communication equipment except as required by state and federal law.

(11) Equipment owned and operated by an amateur radio operator shall be constructed at the minimum height necessary to effectively accommodate amateur radio communications in order to minimize the aesthetic impact. The relative safety and aesthetic impact of different style towers or antennas shall be taken into consideration during the administrative site plan review process outlined in subsection (g).

(12) Wireless communication equipment must at all times be maintained and operated in a way which meets the standards of any ordinance of the City of Newton pertaining to noise ("Noise Ordinance"). An applicant seeking to construct or install any external noise producing equipment ancillary to antennas shall use best efforts to minimize noise emanating from such equipment by the use of air-tight seals and noise absorbing materials on the walls and ducts of such equipment. The applicant shall also submit a report from a qualified acoustical engineer or other appropriate professional certifying that the proposed equipment meets the requirements of the Noise Ordinance. This provision shall apply to all

wireless communication equipment and structures existing on the effective date of this section. Failure to comply with any such ordinance shall constitute a zoning violation.

(d) *Wireless Communication Equipment Allowed As-of-Right.* The following wireless communication equipment is allowed as-of-right, subject to the design and operating criteria of subsection (c) and the review process in subsection (g), if applicable:

(1) Equipment used solely for receiving or transmitting wireless communication customary for private residential use, even if such equipment is used in conjunction with non-residential structures, including but not limited to, a conventional television or radio antenna, fixed wireless personal communication system, direct broadcast satellite antenna one (1) meter or less in diameter, and multipoint distribution service antenna or home satellite dish of not more than two (2) meters in diameter or measured diagonally.

(2) Equipment owned and operated by an amateur radio operator licensed by the FCC, which device shall be installed at the minimum height necessary for the functioning of amateur radio communication in accordance with the licensing requirements for that location. Such equipment, which may include a ground-mounted lattice style tower, shall be allowed in accordance with the setback requirements for primary structures in the district in which it is located and the administrative site plan review process outlined in subsection (g) below. No commercial use of equipment or supporting structures which were installed for amateur radio operation is permitted.

(3) All interior-mounted wireless communication equipment is allowed in business, manufacturing and mixed use districts. In residential districts interior-mounted wireless communication equipment shall be permitted in existing steeples, bell towers, cupolas and spires of non-residential buildings or structures existing on January 5, 1998.

(4) Roof-mounted wireless communication equipment is allowed in business, manufacturing and mixed use districts if it meets the following conditions:

Height of building	Maximum height of equipment above the highest point of the roof	Required setback from edge of roof or building
More than 36 feet	12 feet above roof or 20% of building height, whichever is greater	½ foot for every foot of equipment height, including antenna
10-36 feet	10 feet	1 foot for every foot of equipment height, including antenna

If there is a parapet on any building or structure which does not exceed 36 feet in height and if the roof-mounted wireless communication equipment will be transmitting or receiving in the direction of that parapet, the required setback from the edge or edges of the roof of the building at or beyond the parapet shall be reduced by the height of such parapet. The height of a parapet shall not be used to calculate the permissible maximum height of roof-mounted wireless communication equipment. For the purposes of this section, a parapet is that part of any wall entirely above the roof line.

(5) Facade-mounted equipment located in the business, manufacturing and mixed use districts (a) which does not extend above the face of any wall or exterior surface in the case of structures that do not have

walls, (b) which does not extend by more than 18 inches out from the face of the building or structure to which it is attached and (c) which does not obscure any window or other architectural feature.

(6) Interior-mounted wireless communication equipment in the cupolas, spires or towers of buildings in public use districts.

(7) Satellite earth station antennas not otherwise exempt in subsection (d)(1), which do not exceed two (2) meters in diameter and which are located in business, manufacturing and mixed use districts.

(8) With prior notice to the clerk of the board of aldermen, exterior-mounted antennas, with a power source, not to exceed ten (10) feet in height as measured from the lowest point of attachment, screened from view in some manner and solely for municipal use on existing municipal structures in public use districts.

(e) *Wireless Communication Equipment Allowed by Special Permit.* The following wireless communication equipment is allowed by special permit, pursuant to the procedures outlined in subsection (f) below:

(1) Any interior-mounted wireless communication equipment in non-residential buildings or structures not otherwise allowed in subsection (d)(3) hereof.

(2) Any roof-mounted wireless communication equipment which does not meet the requirements of subsection (d)(4) hereof on a non-residential building in any district.

(3) Facade-mounted wireless communication equipment which does not meet the requirements of subsection (d)(5) hereof.

(4) Building-mounted or interior-mounted wireless communication equipment not otherwise permitted under subsection (d)(6) hereof located in public use districts.

(5) Satellite earth station antennas not otherwise allowed as-of-right in subsections (d)(1) and (d)(7) hereof.

(6) Any building-mounted wireless communication equipment on multi-family structures in residential districts not otherwise allowed as-of-right.

(7) Free-standing monopoles meeting the following criteria:

a) Free-standing monopoles shall be no higher than 100 feet.

b) The setback for a free-standing monopole shall be at least 125 feet from the property line.

c) The setback for a free-standing monopole shall also be at least four (4) feet for every one (1) foot of antenna height from the nearest residential structure and/or public right of way and two (2) feet for every one (1) foot of antenna height from the nearest non-residential structure.

d) Co-location of wireless communication equipment on existing towers and buildings is encouraged. The applicant for a wireless communication monopole shall demonstrate that the communication equipment planned for the proposed structure cannot be accommodated on an existing or approved tower, structure or building within a one-half mile search radius of a proposed monopole for one or more structural, technical, economic or other reasons as documented by a qualified engineer or other qualified professional including, but not limited to the following:

i) no such tower, structure or building exists.

ii) the structural capacity of the existing tower, structure or building is inadequate and cannot be modified at a reasonable cost, the proposed equipment will interfere with the usability of existing equipment.

iii) the owner of an appropriate tower, structure or building has effectively denied permission to co-locate by unreasonable delay or commercially unreasonable terms or conditions.

iv) the height of an existing tower, structure or building is not adequate to permit the proposed equipment to function.

e) Every special permit issued by the board of aldermen for a new monopole or tower shall be automatically subject to the condition that the permit holder must allow co-location upon the structure by other wireless communication providers upon commercially reasonable terms and conditions and without unreasonable delay, if such co-location is technically feasible. It is expressly provided that any requirement imposed by a permit holder which requires the payment of rent in excess of industry standards or which allows the co-location only if the requesting party provides comparable space on one of its structures to the permit holder shall be deemed to be commercially unreasonable.

(8) Modification or addition of wireless communication equipment on or to existing free-standing monopoles or towers, except those monopoles and towers constructed for the purposes allowed in subsection (d)(2) above.

(9) In public use districts wireless communication equipment attached to existing light or power poles, provided that the total height from the ground to the top of the antenna does not exceed sixty (60) feet and provided that all control and operating equipment associated with the antenna can be mounted on the same pole at a height no less than twenty (20) feet above the ground or camouflaged or completely screened from view in some other manner.

10) Any equipment ancillary to antennas otherwise allowed under subsections (c) or (d) hereof, which cannot be located in the rear yard and/or does not meet the setback requirements for the district in which it is located. An applicant may apply for a special permit allowing an alternate location by showing that such equipment (a) is required for successful transmission or reception or is otherwise required by the FCC, (b) cannot due to its size or other health or safety reasons be located within the building, and (c) cannot be located in the rear yard and/or within applicable setbacks for one or more of the following reasons: the size of the equipment; the size of the rear, front and/or side yards; the location within the rear yard or applicable setbacks would result in the removal of required parking; and the aesthetic purposes of the ordinance would be better served by such alternate location.

(f) *Special Permit Procedure.* Where a special permit is required for wireless communication equipment, a written application for a special permit shall be submitted in accordance with section 30-24. Whenever an application for a special permit is required for wireless communication equipment, site plan approval in accordance with the provisions of section 30-23, except section 30-23(c)(2), shall also be required and an application for such approval shall be filed concurrently with the application for special permit. The procedures for special permit set forth in section 30-24(c), except for section 30-24(c)(5), shall apply. The board of aldermen may grant a special permit subject to conditions, safeguards and limitations herein set forth, when, in its judgment, the purposes stated in subsection (a) and the applicable design and operating criteria set forth in subsection (c) hereof have been satisfied.

(g) *Wireless Mesh Networks allowed by permit with a majority vote of the Board of Aldermen.* In public use districts, wireless communication equipment consisting of radio access points or repeaters for wireless mesh networks may be installed on the bracket arms of existing municipal light or power poles by majority vote of the full board of aldermen, acting on the advice and after hearing by the committee having jurisdiction over grants of location for utility poles, so long as the board finds that:

(i) the purposes of Section 30-18A are met; (ii) the design and operating criteria set forth in 30-18A(c) are met; (iii) the total height from the ground to the top of any antenna involved in such equipment does not exceed sixty (60) feet and provided that all control and operating equipment associated with any access point can be mounted on the same bracket arm at a height no less than twenty (20) feet above the ground or colored or finished to blend in with the bracket arm on which it is mounted to be as visually unobtrusive as reasonably as possible; and, (iv) the applicant has demonstrated not only substantial public but also a municipal benefit from the installation and operation of such a network.

Applications for construction, expansion, addition to, rebuilding or conversion of wireless mesh networks shall be reviewed by the board of alderman. Review by the board of aldermen shall not be required where network work involves maintenance, repair or replacement of existing access points. *De minimis* modifications to the network, including an increase in number of devices limited to 10% above the number of access points approved by the board of aldermen or the location of an access point nearer than 200' to the next nearest access point may be approved by the director of planning and development, after notice to the clerk of the board and the commissioner of public works.

(1) *Applications.* A written application for review of a wireless mesh network, on forms to be provided by the department of planning and development, shall be submitted by delivery or registered mail, return receipt requested, to the clerk of the board of aldermen, who shall transmit such application to the board of aldermen and the department of planning and development.

The applicant shall notify immediate abutters to the network pathways where access points are to be installed and make the same notice by publication for two consecutive weeks in a newspaper of general circulation, and shall provide certification of such notification to the clerk of the board. The board, acting by and through its committee with jurisdiction over the filing of applications for public utility easements and poles, shall hold a public hearing on such application within 65 days of the application being filed with the clerk of the board, and certified as complete by the director of planning and development as if the subject of a special permit under section 30-18A.

Any approval of an application for a wireless mesh network shall lapse not later than one (1) year from the grant of such approval unless construction required by such site plan approval has begun. The board of aldermen may extend the period of time granted under this subsection for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon, unless the board or its committee with jurisdiction over the original application shall vote to require a public hearing. Notwithstanding the above, no extensions shall be granted which shall extend the time for substantial exercise of the approval for more than two (2) years from the date of the grant of the requested relief.

The applicant shall submit to and maintain with the department of planning and development current as-built drawings for the locations of all devices to be installed as part of the mesh network.

(2) *Contents of the Application.* A completed application shall include:

a) A forecast of network access point locations. Such forecast shall include a system map or maps depicting the geographic extent of the network pathways;

b) The expected distance between access points, including a total number of access points to be installed, and any impact on tree cover;

c) Photographs showing a representative access point as it would be mounted on each type of existing light or power pole;

d) Drawings, dimensioned and to scale, of the proposed access point as installed on each type of existing light or power pole, as well as a sample device to be made available for inspection;

e) Structural analysis certifying that the access point may be safely installed on each type of existing light or power pole;

f) Equipment specifications and radio frequency emissions calculations for a typical access point; and

g) A demonstration of substantial municipal and public benefit.

(3) *Criteria for any Wireless Mesh Network.* In order to be eligible for any approval under this section, a wireless mesh network must meet the following criteria in addition to those findings specified above:

a) Only one access point may be installed on the bracket arm of any existing municipal light or power pole.

b) The installation shall be made to be as visually unobtrusive as possible.

c) All equipment must be low-powered and in compliance with FCC regulations.

d) The access point equipment shall be as small as possible and shall not exceed fourteen (14) inches in any dimension, exclusive of any antennas, so long as the antennas are no longer than thirty (30) inches.

e) No installation shall extend more than five (5) feet above or two (2) feet below the height of any existing municipal light or power pole to which it is attached.

f) No commercial signage or advertising may be affixed to any network component.

g) Existing trees and vegetation shall be protected as much as possible.

(4) *Repair and Upkeep of any Wireless Mesh Network.* All wireless mesh network devices shall be maintained in good order and repair. Paint finishes shall be maintained and repaired when blemishes are visible from the public way. The applicant shall provide an inspection schedule, and shall file copies of inspections with the director of planning and development.

(5) *Insurance.* The applicant shall continuously insure its wireless mesh network components against damages to persons or property in an amount established by the commissioner of public works based upon the nature and extent of the proposed network. On an annual basis, the applicant shall provide a Certificate of Insurance, in which the city shall be specifically listed as an additional insured, to the commissioner of public works.

(6) *Bond or Other Financial Surety.* All unused access points or parts thereof shall be removed within one year of the cessation of use at the owner's expense. The applicant shall post and submit a bond or other

financial surety acceptable to the commissioner of public works in an amount sufficient to cover the cost of dismantling and removing the access points in the event the commissioner of inspectional services deems it to have been abandoned for more than one year. Said amount shall be certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts.

(h) *Administrative Site Plan Review for Wireless Communication Equipment.* Except for wireless communication equipment described in subsections (d)(1) or (d)(7) hereof, no wireless communication equipment shall be constructed or installed until an application has been submitted to the commissioner of inspectional services with two (2) copies of an accompanying site plan showing the location of the device along with any buildings, lot lines, easements and rights of way and also an elevation showing details of the device. The applicant shall simultaneously send a copy of the application and five (5) copies of the plans to the director of planning and development. The applicant shall also notify in writing immediate abutters and the aldermen of the ward in which the device is to be erected, installed or used of such application. The director of planning and development shall submit an advisory report to the commissioner of inspectional services within three weeks of the application filing date. In making his/her advisory report, the director shall evaluate the application based on the requirements of subsection (c) hereof and may seek input from relevant city agencies including, but not limited to the urban design commission, historical commission, historic district commission or any other city agency. The commissioner shall not approve a permit for wireless communication equipment until the advisory report of the director of planning and development has been received or three weeks have elapsed without receipt of such report, and until all required agency approvals have been issued. The commissioner has the authority to deny any building permit application which the commissioner determines does not comply with the requirements of subsection (c) hereof.

(i) *Exceptions.* In extraordinary instances, the board of aldermen may, in accordance with the procedures provided in subsection (f) hereof, grant a special permit to allow for exceptions to the provisions of section 30-18A if the board makes a determination that the applicant has shown that literal compliance would result in unreasonable discrimination among providers of functionally equivalent services or would have the effect of prohibiting the provision of personal wireless communication services as defined in Section 704 of the Telecommunications Act of 1996. Such exceptions may be conditioned to the extent possible to further the purposes set forth in subsection (a) hereof. (Rev. Ords. 1995, Ord. V-156, 1-5-98; Ord. No. Z-26, 05-19-08; Ord. No. Z-26, 05-19-08)

Exhibit 10

ADDITIONAL INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

1.1 Each Bidder (hereinafter called the "Bidder") by submitting a bid (hereinafter called "bid") represents that it has read and understands the IFB, Contract Forms, Conditions of the Contract, General Requirements and/or Project Specifications, as applicable (collectively, referred to as the "Contract Documents") and the bid is made in accordance therewith.

1.2 Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.

2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at **purchasing@newtonma.gov** or via facsimile (617) 796-1227. The City will only answer such requests if received by **October 10, 2014 at 12:00 noon**.

2.3 Interpretation, correction, or change in the Contract Documents will be made by addendum which will become part of the Contract Documents. The City will not be held accountable for any oral communication.

2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.

2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at **www.newtonma.gov/bids**.

2.6 Bidders or bidders contacting ANY CITY EMPLOYEE Request for Bid (IFB) outside of the Purchasing Department, once an IFB has been released, may be disqualified from the procurement process.

2.7 Bidders downloading information off the internet web site are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes itself known to the Purchasing Department, at **purchasing@newtonma.gov** or via facsimile (617) 796-1227, it shall be placed on the bidder's list. Bidders must provide the Purchasing Department with their company's name, street address, city, state, zip, phone, fax, email address and **REQUEST FOR BIDS #15-27**.

ARTICLE 3 - PREPARATION AND SUBMISSION OF BIDS

3.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the City.

3.2 All entries on the Bid Form shall be made by typewriter or in ink.

3.3 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.

3.4 The Bid shall be enclosed in a sealed envelope with the following plainly marked on the outside:

* IFB: **#15-27**
* TYPE OF PROCUREMENT: **Lease of City Hall Cupola Space for Cell Phone Wireless Transmitters**
* BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER

3.5 Date and time for receipt of bids is set forth in the IFB.

3.6 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder. In the event that Newton City Hall is closed on the date or at the time that bids are due, the date and time for receipt of bids shall be on the next business day following that the Newton City Hall is open.

3.7 Bids shall be submitted with one **original** and five (5) **copies.** An additional digital DVD copy of the proposal is requested but not required**.**

ARTICLE 4 - WITHDRAWAL OF BIDS

4.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or electronic request. Electronic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.

4.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.

4.3 No bids may be withdrawn after the opening of the bids.

ARTICLE 5 - CONTRACT AWARD

5.1 The City will award the contract to the lowest responsive and responsible Bidder within sixty (60) days (Saturdays, Sundays, and legal holidays excluded) after the opening of bids.

5.2 The City reserves the right to waive minor informalities in or to reject any or all Bids if it be in the public interest to do so.

5.3 The City reserves the right to reject any bidder who has failed to pay any local taxes, fees, assessments, betterments, or any other municipal charge, unless the bidder has a pending abatement application or has entered into a payment agreement with the collector-treasurer.

5.4 As used herein, the term "lowest responsible and responsive Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who has met all the requirements of the invitation for bids; (3) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (4) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.

5.5 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a contract in the form included in the Contract Documents in such number of counterparts as the City may require.

5.6 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

ARTICLE 6 - TAXES

The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City’s exemption Number is E-046-001-404.

Exhibit 11

CITY OF NEWTON

BIDDER'S QUALIFICATIONS

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____

2. WHEN ORGANIZED: _____

3 INCORPORATED? _____ YES _____ NO DATE AND STATE OF INCORPORATION: _____

4. IS YOUR BUSINESS A **MBE**? _____YES _____NO **WBE**? _____YES _____NO or **MWBE**? _____YES _____NO

* 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OFCOMPLETION:

_____
_____
_____
_____
_____

* 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?
_____ YES _____ NO
IF YES, WHERE AND WHY?

_____
_____

* 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? _____ YES _____ NO
IF YES, PROVIDE DETAILS.

_____
_____

* 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

_____
_____
_____
_____
_____
_____
_____

* 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____

DOLLAR AMOUNT: $ _____ DATE COMPLETED: _____
PUBLICLY BID? _____YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: ____)_____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

_____

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: $ _____ DATE COMPLETED: _____
PUBLICLY BID? _____YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____)_____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

_____

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: $ _____ DATE COMPLETED: _____
PUBLICLY BID? _____YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON:_____ TELEPHONE #: (____)_____
CONTACT PERSON'S RELATION TO PROJECT?:_____
(i.e., contract manager, purchasing agent, etc.)

_____

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: $ _____ DATE COMPLETED: _____
PUBLICLY BID? _____YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #:(____)_____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

City of Newton

Mayor
Setti D. Warren

Purchasing Department
Nicholas Read @ *Chief Procurement Officer*
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
purchasing@newtonma.gov

Telephone
(617) 796-1220
Fax:
(617) 796-1227
TDD/TTY
(617) 796-1089

Date

Vendor

Re: Debarment Letter for Invitation For Bid #15-27

As a potential vendor on the above contract, the City requires that you provide a debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

I hereby certify under pains and penalties of perjury that neither I nor any principal(s) of the Company identified below is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

_____ (Name)
_____ (Company)
_____ (Address)
_____ (Address)
PHONE _____ FAX _____
EMAIL _____

_____Signature

_____Date

.

If you have questions, please contact Nicholas Read, Chief Procurement Officer at (617) 796-1220.

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

X Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person ▶** **Date ▶** Name

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

Cat. No. 10231X Form **W-9** (Rev. 10-2007)