



Invitation to Bid

for

Emissions Testing – Sludge Incinerator

ITB # 2234

Date issued: June 24, 2013

1. INTRODUCTION

1(A) Background

The City of Lynnwood (the “City”) is located in South Snohomish County approximately fifteen (15) miles north of Seattle and twelve (12) miles south of Everett. The City serves as the primary business center of south Snohomish County. The City has a population of over 35,000 and encompasses almost eight (8) square miles in Snohomish County. A mayor-council form of government administers the City with seven (7) elected Council members and an elected Mayor. The City’s approximately 311 regular full-time employees, 17 regular part-time employees, and 150 part-time/seasonal employees provide an array of services including police, fire protection, emergency medical services, water distribution, sewage collection and treatment, street construction and maintenance, and parks and recreational facilities including a pool, a senior center, and a golf course. The City also has a municipal court and a jail facility that provide services locally and to other governmental agencies.

The Mayor directs all City operations. The location of City Hall is 19100 44th Avenue West, Lynnwood WA 98046.

The City has nine (9) central departments: Fire; Police; Human Resources; Public Works; Municipal Court; Economic Development; Administrative Services; Parks, Recreation and Cultural Arts; and Community Development.

For more information about the City of Lynnwood, visit the City’s website at <http://www.ci.lynnwood.wa.us>.

1(B) ITB Purpose and Summary

The City operates a fluidized bed incinerator to dispose of solids produced by the operation of its wastewater treatment plant (WWTP). The incinerator uses a venturi and wet scrubber following combustion for emissions control. The incinerator has a Continuous Emissions Monitoring (CEM) system for monitoring carbon monoxide and oxygen in the stack exit gas. A 'sealed' ash handling system is used to remove the collected ash for disposal.

This ITB covers the work necessary to perform engineering level emissions testing of the incinerator stack in accordance with table two of sub-part MMMM of Part 60 of the Model Rule for Emissions Limits and Standards for Existing Fluidized Bed Sewage Sludge Incineration units. **This is engineering level testing; a formal report submitted to the Puget Sound Clean Air Agency is not required.**

1(C) ITB Cover Sheet

CITY OF LYNNWOOD
ITB No. 2234
Emissions Testing – Sludge Incinerator
Response Cover Sheet

| | Yes | No |
|---|--------------------------|--------------------------|
| Has your company operated at least 1 year without interruption? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has an owner of your company been convicted of a crime within the past 10 years? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does any employee or official of the City have any financial or other interest in your firm? | <input type="checkbox"/> | <input type="checkbox"/> |
| If selected, do you agree to execute a contract essentially the same in form as the sample contract attached as Section 8? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does your company maintain insurance in amounts specified by City contract? (if no, this does not necessarily eliminate vendor from submittal): | <input type="checkbox"/> | <input type="checkbox"/> |
| If no, describe differences: _____ | | |
| Are there any claims pending against this insurance policy? | <input type="checkbox"/> | <input type="checkbox"/> |
| If yes, describe _____ | | |
| Does your company maintain Professional Liability Insurance? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has your company been in bankruptcy, reorganization or receivership in the last five years? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has your company been disqualified by any public agency from participation in public contracts? | <input type="checkbox"/> | <input type="checkbox"/> |
| Is your company licensed to do business in the State of Washington? | <input type="checkbox"/> | <input type="checkbox"/> |

Undersigned acknowledges that addenda _____ through _____ have been taken into account as part of this requirement.

The undersigned hereby accepts the terms and conditions as set forth herein. This page must be signed and dated by the vendor’s representative who is legally authorized to contractually bind the vendor.

FULL LEGAL NAME OF COMPANY _____

TYPE OF BUSINESS Corporation Partnership (general) Partnership (limited)
 Sole Proprietorship Limited Liability Company

FEDERAL EMPLOYEE ID NUMBER (FEI): _____

ADDRESS _____

CITY/STATE/ZIP _____

EMAIL ADDRESS: _____

PHONE _____ FAX _____

NAME(PLEASE PRINT) _____ TITLE _____

SIGNED _____ DATE _____

LYNNWOOD BUSINESS LICENSE – To be obtained at award by the apparent successful vendor and at the vendor’s expense. The successful vendor is responsible for compliance with Lynnwood business license requirements per LMC 5.06.01b, and 5.06.04b. Vendors may call 425-670-5159 for business license information.

1(D) Non-Collusion Certification

**City of Lynnwood
ITB No. 2234
Emissions Testing – Sludge Incinerator**

NON-COLLUSION CERTIFICATION

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this bid/quote, and is in all respects fair and without collusion or fraud.

The below signed vendor has not divulged to nor discussed or compared his/her bid with other vendors and has not colluded with any other vendor or parties to bid whatsoever. Note: No premiums, rebates or gratuities to any employee or agent are permitted either with, prior to, or after any delivery of materials and/or services. Any such violation will result in the cancellation of any resultant contract and/or return of material as applicable.

Company Name: _____

Mailing Address: _____

City-State-Zip: _____

Date: _____

Authorized Signature: _____
(printed)

Authorized Signature: _____
(signed)

Title: _____

2. ITB INSTRUCTIONS AND INFORMATION

2(A) ITB Timeline

The City reserves the right, at its discretion, to change and/or alter the dates and times of this timeline.

| Day/Date | Description |
|--|---|
| Monday, June 24, 2013 | Advertisement announcing ITB placed in The Herald and Daily Journal of Commerce. ITB placed on City of Lynnwood website. ITBs available to vendors via email notification and/or access to website. |
| Monday, July 1, 2013 | All questions on the question submittal form shown in Section 6 are due. |
| Monday, July 8, 2013 | All pertinent and relevant questions posed by the above date on the required question submittal form, Section 6, will be answered. |
| Thursday, July 11, 2013 2:00 p.m. | ITB responses due to the Purchasing Department at City Hall located at 19100 44 th Ave. W., Lynnwood, WA 98036. <u>Respondents assume the risk of the method of dispatch chosen. The City assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual receipt of bids. Bids shall not be delivered by facsimile transmission or other telecommunication or electronic means unless specifically approved by the buyer.</u> |
| Friday, July 12, 2013 | Vendors' bids verified, tabulated and posted on the City's website. |
| Wednesday, July 17, 2013 | Award to apparent successful RESPONSIBLE AND RESPONSIVE vendor is made. |

2(B) Selection and Evaluation Team

| | |
|---|-------------------------------|
| Mayor and City Council | Stakeholders |
| Les Rubstello, Deputy Director Maintenance and Operations | Team Leader |
| John Ewell, Treatment Plant Supervisor | Team Member |
| Larry L. O'Connor, C.P.M., Buyer | Team Member / ITB Coordinator |

2(C) ITB Coordinator

| | | |
|--------------------------------------|-------|---|
| Larry L. O'Connor, C.P.M. | Buyer | <p>Physical Address: 19100 44th Avenue West Lynnwood, WA 98036</p> <p>Mailing Address: PO Box 5008 Lynnwood, WA 98046-5008</p> <p>Email address: loconnor@ci.lynnwood.wa.us</p> <p>Any and all communication to the buyer relative to this requirement must be via email.</p> |
|--------------------------------------|-------|---|

2(D) ITB Evaluation Criteria

An evaluation team composed of the members of the Selection and Evaluation Team listed in Section 2(B) and others will evaluate the ITB responses received from each vendor. Prior to the selection of the award to the apparent successful vendor, the City reserves the right to conduct on-site visits of any vendors' facilities and/or require any vendor to participate in a presentation to the evaluation team (and others) of the items contained in the ITB response and any other items deemed appropriate by the City.

If an award is made as a result of this ITB, it shall be awarded to the vendor whose proposal is most advantageous to the City with price and other factors including, but not limited to, Responses to the ITB questions; demonstrated technical ability and expertise; financial stability; reference calls and/or recommendations; memberships, licenses, ISO Certifications or any other applicable membership or certifications; presentations to the City evaluation team and others (if applicable); on-site visits at vendor's site (if applicable), product samples which the City may, at its discretion, request as part of the ITB process; any additional criteria deemed appropriate by the City which would lend itself to establishing the Service Provider's viability to perform the work as outlined in this ITB.

When determining whether a vendor is responsible, or when evaluating a vendor's proposal, the following factors will be considered, any one of which will suffice to determine if a vendor is

either not a responsible vendor or if the vendor's proposal is not the most advantageous to the City:

1. The ability, capacity and skill of the vendor to perform the contract or provide the service required.
2. The character, integrity, reputation, judgment, experience and efficiency of the vendor.
3. Whether the vendor can perform the contract within the time specified
4. The quality of performance of previous public and private contracts or services, including, but not limited to, the vendor's failure to perform satisfactorily or complete any written contract. The City's termination for default of a previous contract with a vendor shall be deemed to be such a failure.
5. The previous and existing compliance by the vendor with laws relating to the contract or services.
6. Evidence of collusion with any other vendor, in which case colluding vendors will be restricted from submitting further bids on the subject project or future tenders.
7. The vendor is not qualified for the work or to the full extent of the ITB.
8. There is uncompleted work with the City or others, or an outstanding dispute on a previous or current contract that might hinder, negatively affect or prevent the prompt completion of the work bid upon.
9. The vendor failed to settle bills for labor or materials on past or current public or private contracts.
10. The vendor has been convicted of a crime arising from a previous public contract, excepting convictions that have been pardoned, expunged, or annulled.
11. The vendor has been convicted of a crime of moral turpitude or any felony, excepting convictions that have been pardoned, expunged or annulled, whether in this state, in any other state, by the United States, or in a foreign country, province or municipality. Vendors shall affirmatively disclose to the City all such convictions, especially of management personnel or the vendor as an entity, prior to notice of award or execution of a contract, whichever comes first. Failure to make such affirmative disclosure shall be grounds, in the City's sole option and discretion, for termination for default subsequent to award or execution of the contract.
12. More likely than not, the vendor will be unable, financially or otherwise, to perform the work.
13. At the time ITB award, the apparent successful vendor must obtain a City of Lynnwood business license. Failure to do so will constitute a determination that the vendor is not responsive and may be disqualified.
14. Such other information as may be secured having a bearing on the decision to award the contract.
15. Any other reason deemed proper by the City.

2(E) Notices and Response Criteria

2(E)1 Good Faith

This ITB has been compiled in good faith. The information contained within is selective and subject to the City's updating, expansion, revision and amendment.

2(E)2 Right to Cancel

The City reserves the right to change any aspect of, terminate, or delay this ITB, the ITB process and/or the program which is outlined within this ITB at any time, and notice shall be given in a timely manner thereafter.

2(E)3 Not an Award

Recipients of this ITB are advised that nothing stated herein, or any part thereof, or any communication during the evaluation and selection process, shall be construed as constituting, offering or awarding a contract, representation or agreement of any kind between the City and any other party, save for a formal written contract, properly executed by both parties.

2(E)4 Property of the City

Responses to this ITB will become the property of the City, and will form the basis of negotiations of an agreement between the City and the apparent successful vendor.

2(E)5 City not Liable for Costs

The City is not liable and will not be responsible for any costs incurred by any vendor(s) for the preparation and delivery of the ITB responses, nor will the City be liable for any costs incurred prior to the execution of an agreement, including but not limited to, presentations by ITB finalists to the City.

2(E)6 City's Expectations

During the review of this document, please note the City's emphasis on the expectations, qualities, and requirements necessary to be positioned as an ITB finalist and successful vendor.

2(E)7 Waiver of Minor Administrative Irregularities

The City reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.

2(E)8 Single Response

A single response to the ITB may be deemed a failure of competition, and in the best interest of the City, the ITB may be cancelled.

2(E)9 Proposal Rejection; No Obligation to Buy

The City reserves the right to reject any or all proposals at any time without penalty. The City reserves the right to refrain from contracting with any vendor. The release of this ITB does not compel the City to purchase. The City may elect to proceed further with this project by interviewing firm(s) well –suited to this project, conducting site visits or proceeding with an award.

2(E)10 Right to Award

The City reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially with the most favorable terms the vendor can offer.

2(E)11 Withdrawal of Proposals

Vendors may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request signed by an authorized representative of the vendor must be submitted to the ITB Contact. The vendor may submit another proposal at any time up to the proposal closing date and time.

2(E)12 Non-Endorsement

As a result of the selection of a vendor to supply products and/or services to the City is neither endorsing nor suggesting that the vendor's product is the best or only solution. The vendor agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

2(E)13 Proprietary Proposal Material

Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. If a request is made to view a vendor's proposal, the City will comply according to the Open Public Records Act, chapter 42.17 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected vendor has been given an opportunity to seek a court injunction against the requested disclosure.

2(E)14 Errors in Proposal

The City will not be liable for any errors in vendor proposals. Vendors will not be allowed to alter proposal documents after the deadline for proposal submission.

The City reserves the right to make corrections or amendments due to errors identified in proposals by the City or the vendor. This type of correction or amendment will only be allowed for such errors as typing, transposition or any other obvious error. Vendors are liable for all errors or omissions contained in their proposals.

If, after the opening and tabulation of proposals, a vendor claims error and requests to be relieved of award, s/he will be required to promptly present certified work sheets. The ITB contact will review the work sheets and if the ITB Coordinator is convinced, by clear and convincing evidence, that an honest, mathematically excusable error or critical omission of costs has been made, the vendor may be relieved his/her proposal.

After opening and reading proposals, the City will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between a price per unit and the extended amount of any proposal item, the price per unit will control. The City will use the total of extensions, corrected where necessary.

2(E)15 Bid Bond – A bid bond is not required

2(E)16 Performance Bond - A performance bond is not required.

2(E)17 Payment Bond – A payment bond is not required.

2(E)18 Funding

Any contract entered into as a result of this ITB is contingent upon the continued funding by the City of Lynnwood.

2(E)19 Terms of Payment

The City's terms of payment are Net 30 days upon receipt of an undisputed invoice for goods that have been delivered and accepted. No down payment or advance payment of any kind will be made. Washington State law requires proof that the materials have been furnished, the services rendered or the labor performed as described before payment may be made. A vendor may submit an invoice for partial shipments or progress payments. All invoices must be submitted to:

City of Lynnwood
Accounts Payable
P O Box 5008
Lynnwood, WA 98046-5008

3. BIDDING INFORMATION

3(A) Bidding Information

Sealed bids for this requirement will be received at the City of Lynnwood, Purchasing and Contracts Division, P.O. Box 5008, Lynnwood, WA 98046-5008, or hand-delivered to 19100 44th Avenue West, Lynnwood, WA, 98036, until **2:00 p.m.**, on the day and date shown in the Timeline, Section 2(A). Only bids that arrive in the Purchasing and Contracts Division by the deadline will be considered.

Bid submittal sheets are attached as Section 5 and must be used in the submittal. All bids shall be submitted on furnished forms. Failure to use the furnished forms may be a cause for disqualification.

Information regarding this solicitation, including addenda and bid results are available at www.ci.lynnwood.wa.us > purchasing > bids and awards. The City reserves the right to reject any or all submittals, waive technicalities or irregularities, and accept any submittals if such action is believed to be in the best interest of the City.

By the submission of a bid responding to this ITB, all bidders certify that they are not on the Comptroller General's list of ineligible contractors (the State Debar list) nor the list of parties excluded from Federal procurement or non-procurement programs (the Federal Debar list).

3(B) Alternate Bids

The City will consider alternate bids submitted by the bidder. Alternate bids shall be clearly marked with the proposed alternates, and include all pricing/cost advantages, if applicable.

For alternate bids to be considered, they must be accompanied by a response based on the original ITB.

3(C) Bid Validity

Pricing shall be good through current year production cycle OR, if the production cycle is not applicable, for a period of 180 days after award.

3(D) Cooperative Purchasing

RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions). Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City and which are actively participating may purchase from City contracts, provided that the vendor has agreed to such participation. Each bidder shall indicate on the bid submittal form (5D) if it will honor other public agency orders in accordance with contract terms and conditions in addition to orders from the City. The City does not accept any responsibility for orders issued by other public agencies.

Public agencies desiring to use the City's contracts must have executed an Intergovernmental Cooperative Purchasing Agreement with the City, as required by RCW 39.34. Only those public agencies that have complied with these requirements are eligible to use this contract. The public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. A purchase by a public agency shall be in effect by an order from the public agency, directed to the Vendor or other party contracting to furnish goods or services to the City. The City accepts no responsibility for the performance of any purchasing contract by the Vendor, nor any responsibility for payment of the purchase price for any public agency.

4. SPECIFICATIONS

See attached Exhibit A

5. BID SUBMITTAL DOCUMENTS

5(A) Bid Submittal Sheet

CITY OF LYNNWOOD
ITB # 2234
Emissions Testing – Sludge Incinerator
Bid MUST be submitted on this sheet

| Item # | Quantity | DESCRIPTION | Price | Per (Unit of measure) | Extended Price |
|------------------------------------|----------|--|-------|-----------------------|----------------|
| 1. | 1 | Testing and Reporting of Emissions per Exhibit A | \$ | Lump Sum | \$ |
| SUBTOTAL | | | | | \$ |
| _____ % Washington State Sales Tax | | | | | \$ |
| TOTAL | | | | | \$ |

5(B) Other

Vendor must list below **any and all** charges, expenses, and/or costs to be incurred by the City that are not included in this section. Failure to specifically and thoroughly enumerate such items may be a cause for disqualification.

| Item # | Quantity | DESCRIPTION | Price | Per (Unit of measure) | Extended Price |
|--------|----------|-------------|-------|-----------------------|----------------|
| 1. | | | \$ | | \$ |
| 2. | | | \$ | | \$ |
| 3. | | | \$ | | \$ |

5(C) Delivery

State the number of calendar days to have a guaranteed delivery to Lynnwood after receipt of Contract or Purchase Order: _____ days

5(D) Cooperative Purchasing

The City accepts no responsibility for the payment of the purchase price by other government agencies. Agreement of participation in cooperative purchasing by the bidder indicates that it will provide to any requesting agency, all administrative functions to include, but not be limited to, bid documentation, ITB award and contract, purchase order, price sheets. Please see section 3(D) for further explanation of cooperative purchasing.

Will you sell additional units to the City or other government agencies within the State of Washington at the bid price, terms and conditions until further notice?

Yes No

6. QUESTION SUBMITTAL FORM

Questions regarding this ITB must be submitted in writing, in electronic form (MS Word), on the form provided in this Section 6 (below) and returned via: email to the ITB Contact listed in Section 2(C), and only during the allotted timeframe detailed in the timeline, Section 2(A). Only **ONE** question per form is permitted; duplication of the form is acceptable in the event you have additional questions.

Answers to all questions from all vendors will returned to all ITB participants without identifying the vendor making the inquiry.

| | |
|---|---------------------------|
| ITB #2234 Emissions Testing – Sludge Incinerator | ITB QUESTIONS FORM |
|---|---------------------------|

| | | | |
|----------------------------|--|------------------|--|
| ITB SECTION AND PARAGRAPH: | | ITB PAGE NUMBER: | |
| SUBMITTED BY: | | DATE SUBMITTED: | |
| EMAIL: | | PHONE: | |
| COMPANY NAME: | | | |

All vendors are required to direct their questions to the ITB Coordinator listed in Section 2(C). Only one question per form is permitted.

7. CUSTOMER REFERENCES

| |
|---|
| City of Lynnwood Bid No. 2234 Emissions Testing – Sludge Incinerator Customer References |
|---|

1. **Company Name** _____

Business Address _____

Name of Contact _____

Title of Contact _____

Telephone Number of Contact _____

Description of Project _____

Date of Order _____

2. **Company Name** _____

Business Address _____

Name of Contact _____

Title of Contact _____

Telephone Number of Contact _____

Description of Project _____

Date of Order _____

3. **Company Name** _____

Business Address _____

Name of Contact _____

Title of Contact _____

Telephone Number of Contact _____

Description of Project _____

Date of Order _____

8. Sample Contract



ROUTINE SERVICES CONTRACT

CITY OF LYNNWOOD

**TITLE: Emissions Testing – Sludge Incinerator
CONTRACT # 2234**

This Contract, dated effective the **xxxxx of xxxxxx, 201x** and is made and entered into by and between the City of Lynnwood (“the City”) and **xxxxxxxxxxxxxxxx** (“Vendor”).

- Company Name:
- Contact Name:
- Vendor Address:
- Vendor Phone:
- Vendor Fax:
- Vendor e-mail:

WHEREAS, the purpose of this Contract is for Emissions Testing – Sludge Incinerator; and

WHEREAS, the Vendor has the requisite training, skill and experience necessary to perform the services required by the City; and

WHEREAS, the parties desire to enter into this Contract setting forth the terms and conditions relating to the performance of the required services.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the City and Vendor mutually agree as follows:

1. Scope of Work.

Vendor shall perform the services described in Exhibit A attached hereto. All services, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed by Vendor under this Contract shall be collectively referred to herein as the Work. Vendor shall commence, perform and complete the Work in accordance with the schedule set forth in Exhibit A. The City’s **Invitation to Bid #2234** dated **XXXX** and the Vendor’s

response to this ITB #2234 dated XXXXX are incorporated into this Contract by reference.

2. Term of Contract.

The term of this contract shall be XXX (X) years with XX (XX) additional one (1) year renewal terms, upon mutual written agreement by both parties.

3. Performance of Work.

Vendor shall begin the Work upon receipt of an approved purchase order from the City Purchasing and Contracts Division or a notice to proceed. Vendor shall perform the Work and accomplish such tasks as identified and designated as the responsibilities of Vendor throughout this Contract. Vendor shall have authority to incur costs and expenses necessary to perform the Work, subject to the limitations specified herein and any attachments.

4. Termination.

This Contract may be terminated by the City without cause upon ten (10) days' written notice to Vendor. Vendor will be paid for all Work performed prior to the termination date in accordance with the compensation provisions set forth in Exhibit B attached hereto. The City reserves the right to cancel this Contract with cause, effective at a time of its choosing, by providing written notice of termination to Vendor. Work in progress would be completed at the City's option.

This Contract is contingent upon the City Council's appropriation of sufficient funds for the Work contemplated under this Contract. In the event that sufficient funds are not appropriated for the Work, the City shall have the right to terminate the Contract, effective immediately, without termination charge or other liability, by providing written notice of termination to Vendor.

5. Vendor to Direct Work.

Vendor shall control and direct the performance of the Work pursuant to this Contract, subject to the City's oversight. The City reserves the right to inspect, review and approve the Work of Vendor to assure that it has been completed as specified, before payment.

6. Performance Standard.

All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

7. Compensation.

- a. Total Compensation The City agrees to pay compensation for the satisfactory performance of the Work in accordance with Exhibit B, which compensation shall not exceed \$ xxx without prior written authorization from City. Payment shall be made after review and authorization by the City. Said authorization shall be conditioned upon the submittal of an invoice setting forth a breakdown of the services performed and costs incurred. Such payment shall be full compensation for Work performed and/or services rendered and for all

supervision, labor supplies, materials, equipment or use thereof, and for all other expenses and incidentals necessary to complete the Work.

- b. Additional Services. Additional services, if any, beyond the initial scope of work shall be compensated at the same compensation rate as defined above. Such additional work must have the prior written approval of the City.
- c. Disputed Work. If the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may request Vendor to repair the Work before the City is obligated to make payment for such Work. In such event, the City will clearly and reasonably provide to Vendor an explanation of the City's concern regarding the Work performed and the remedy that the City expects from Vendor. If the Vendor does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the Work not properly completed.
- d. Method of Payment. Vendor shall submit an invoice for the compensation for Work performed. An itemized billing statement in a form approved by the City will be submitted to provide a detailed description of the Work performed during the month, the number of hours spent performing such Work, any reimbursable costs and expenses that have been approved by the City and were incurred in connection with such Work. Accurate invoices must have the Purchase Order Number clearly marked on the invoice and will be paid net thirty (30) days, after receipt of an undisputed invoice. Invoices shall be submitted to the following address:

City of Lynnwood
Attn: Accounts Payable
PO Box 5008
Lynnwood WA 98046-5008

8. Representations.

Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

Vendor will provide and maintain trained personnel and adequate facilities and equipment to perform the Work.

9. Independent Contractor.

It is the intention and understanding of the parties that Vendor shall be an independent contractor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Vendor shall not be deemed to convert this Contract to any employment contract. It is recognized that Vendor may or will be performing

services during the term of the Contract for other parties and that the City is not the exclusive user of the Vendor's services.

10. Inspection.

Work under this Contract shall be subject to review and examination by the City at all times, and shall be subject to its approval. Vendor shall periodically confer with the City during the course of Work. Vendor shall prepare and present any information and materials (e.g. a detailed outline of completed work) as may be pertinent, necessary, or requested by the City to determine the adequacy of the Work as it progresses or to determine Vendor's progress.

The making (or failure or delay in making) such examination shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Vendor shall provide the City sufficient, safe and proper facilities and equipment for such inspections and free access to such facilities.

11. Prevailing Wages.

If required by the specifications or by RCW 39.12, prevailing wages shall be paid. Vendor specifically agrees to comply with RCW 39.12 and to file all required forms, certifications, and affidavits necessary to comply with Federal and State laws before final payment shall be made to the Vendor. The latest prevailing wage rate information is available per the State of Washington, Department of Labor and Industries, Industrial Relations Division.

12. Record-Keeping and Right to Audit.

Vendor shall promptly furnish the City with such information related to the Work as may be requested by the City. Until the expiration of twenty-four (24) months after final payment of the compensation payable under this Contract, Vendor shall provide the City access to (and the City shall have the right to examine, audit and copy) all of Vendor's books, documents, papers and records which are related to Work or this Contract.

13. Property and Confidential Information.

Vendor shall not, without the prior written consent of the City, disclose to third parties any information received in connection with Work unless:

- (a) The information is known to Vendor before receiving the same directly or indirectly in connection with Work;
- (b) The information is in the public domain at the time of disclosure by Vendor; or
- (c) The information is received by Vendor from a third party who does not have an obligation to keep the same confidential.

14. Indemnification.

Subject to limitations herein, Vendor releases and shall defend, indemnify, and hold harmless the City and its officials, officers, employees and agents from and against all claims, cost liabilities, damages, and expenses, (including, but not limited to, reasonable attorney's fees) arising directly out of or in connection with:

- (a) Any fault, negligence, strict liability or product liability of Vendor in connection with the Work or this Contract;
- (b) Any lien asserted upon any property of the City in connection with Work or this Contract;
- (c) Any failure of Vendor or Work to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; or
- (d) Any breach of, or default under, this Contract by Vendor.

This indemnification provision shall apply to the full extent permitted under applicable law. However, nothing in this provision shall require Vendor to indemnify the City against any liability for damages arising out of bodily injury or property damages caused by or resulting from negligence of the City. Further, in the case of concurrent negligence of Vendor and the City, Vendor shall be required to indemnify the City only to the extent of the negligence of the Vendor.

Vendor releases and shall defend, indemnify and hold harmless the City and its officials, officers, employees and agents from and against all claims, cost, liabilities, damages, expenses (including, but not limited to reasonable attorney's fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property right by any Work. Further, if any Work infringes or misappropriates any patent, copyright, trade secret, trademark, or other intellectual property right, Vendor shall either:

- (a) Procure for the City the right to use such intellectual property rights; or
- (b) Modify such Work so that the Work no longer infringes or misappropriate any such right.

15. City of Lynnwood Business License. Vendor may be required to obtain a City of Lynnwood business license before performing any Work. The cost of obtaining the business license is at the expense of the Vendor and shall not be reimbursed by the City. Please access the business license requirements and information at "Get Your Business License" which can be obtained on the City's website at www.ci.lynnwood.wa.us.

16. Insurance.

Vendor must provide the insurance as set forth in Exhibit C attached hereto.

17. Warranty.

Vendor hereby warrants that all Work furnished under this Contract will fully meet all requirements for quality of workmanship and all other requirements of the specifications for such Work. Vendor shall be required to obtain and assign to the

City all available warranties from each manufacturers or suppliers for any parts, equipment or other materials incorporated into the Work. Vendor agrees to provide such additional warranties for the Work as may be described and set forth in Exhibit A.

18. Notices.

Any notices required or permitted to be given under this Contract shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by electronic transmission in the form of email or facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To City:

Purchasing and Contracts Division
 City of Lynnwood
 P.O. Box 5008
 Lynnwood, WA 98046-5008
 Fax: 425-771-6144

To Vendor:

or to such other address as may be designated in writing by the parties.

19. General Provisions.

- a. Entire Agreement. This Contract, including its attachments, contains the entire understanding between City and Vendor with respect to the Work. Any prior, contemporaneous, or oral agreements, promises, negotiations or representations not expressly set forth herein, are of no force or effect. Subsequent modifications or amendments to this Contract shall be in writing and shall be signed by the parties to this Contract. Services to be performed by Vendor for City that are outside the scope of services of this Contract shall be performed pursuant to written agreements separately negotiated by both parties.
- b. No Gifts and Gratuities. Vendors must not offer, nor can City employees accept, gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with City business practices. It is also unlawful for anyone to offer another, to influence or cause him or her to refrain from submitting a bid. Vendors and City employees must strictly adhere to the applicable statutes and ordinances for ethics in contracting and purchasing, including the Lynnwood Code of Ethics, Chapter 2.94 LMC, and the Code of Ethics for Municipal Officers, Chapter 42.23 RCW. This provision is applicable to any business practice, whether a contract condition, bid practice, or at any activity related to City business.
- c. No Conflict of Interest. Vendor confirms that Vendor does not have a business interest or close family relationship with any City officer or employee who was, is, or will be involved in vendor selection, negotiation, drafting, signing, administration or evaluation of Vendor’s performance.

- d. Compliance with Law. Vendor shall comply with all applicable federal, state and local laws in effect at the time of the performance of the Work under this Contract.
- e. Licenses, Permits and Similar Authorization. Vendor, at no expense to City, shall secure and maintain in full force and effect during the term of this Contract, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- f. Law/Venue. This Contract shall be interpreted and enforced in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be filed and conducted in Snohomish County Superior Court.
- g. Attorneys' Fees. If any party commences or files any litigation against the other party relating to the performance, enforcement or breach of this Contract, the prevailing party in such action shall be entitled to all costs, including attorneys' fees and costs and any such fees and costs incurred on appeal.
- h. Severability. If any provision of this Contract is declared invalid, illegal or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Contract shall continue in full force and effect, and no provisions shall be deemed to depend upon any other provision unless so expressed herein.
- i. Survivability. The obligations of Vendor under all provisions of this Contract, which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Contract, shall survive the completion, termination or cancellation of this Contract.
- j. No Waiver. Failure or delay by the City to declare any breach or default immediately upon occurrence shall not waive such right. Failure of the City to declare a breach or default does not act as a waiver of the City's right to declare another breach or default.
- k. Authority. Each party warrants and represents that such party has full and complete authority to enter into this Contract and each person executing this Contract on behalf of a party warrants and represents that he/she has been fully authorized to execute this Contract on behalf of such party and that such party is bound by the signature of such representative.
- l. Assignment, Subcontracting, Delegation. Vendor may not (by contract, operation of law, or otherwise) delegate, subcontract or assign performance of the Work to any other person or entity without the prior written consent of the City. Any such delegation or subcontracting without the City's prior written consent shall be voidable at the City's option.

m. Counterparts. This Agreement may be executed in separate counterparts and delivered by facsimile or such other electronic means as are available to the Parties. Such counterparts taken together shall constitute one and the same original document.

IN WITNESS WHEREOF, the City and Vendor have executed this Contract as of the date first above written.

CITY OF LYNNWOOD

VENDOR NAME

Don Gough, Mayor

Signature

Date

Printed Name

ATTEST BY:

Title

Lorenzo Hines, Finance Director

Date

Date

EXHIBIT B - COMPENSATION

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EXHIBIT C – INSURANCE REQUIREMENT

Vendor must provide insurance as follows:

Worker’s Compensation and Employer’s Liability Coverage: coverage or insurance in accordance with the applicable laws related to worker’s compensation, and employer’s liability insurance with limits no less than \$1,000,000 including \$1,000,000 for bodily injury by Accident, each accident; and \$1,000,000 bodily injury by disease, each employee; and \$1,000,000 bodily injury, policy limit (including but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. In case of subcontracted work, Vendor shall require each subcontractor to provide Worker’s Compensation insurance for their employees unless Vendor covers such employees.

Vendor’s Liability and Property Damage Insurance: Vendor shall procure and maintain during the life of this Contract and during performance of Work, Commercial General Liability, and Automobile Liability Insurance, to protect the City and Vendor from and against all claims, damages, losses and expenses arising out or resulting from the performance of these services, as detailed herein, with insurance companies or through sources approved by the State Insurance Commissioner pursuant to RCW Chapter 48. The City reserves the rights to require higher limits should it deem it necessary in the best interest of the public.

- a) The insurance policies shall include the City as Additional Insured on a Primary Basis without limitation, and shall include others if required by the Contract documents.
- b) Certificate of Insurance and a separate page showing the Additional Insured Endorsement shall be filed with the City after award but before execution of the contract, for a primary policy of commercial general liability insurance, meeting the requirements set forth herein. This Certificate shall be subject to approval by the City as to company, terms and coverage. Failure of the vendor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.
- c) The Certificate of Insurance and accompanying Additional Insured Endorsement, shall print the following under the description field:
City of Lynnwood is included as Additional Insured per form CG2010 (0704) with respect to any and all operations of the Named Insured
- d) Vendor shall not begin work under this Contract until all required insurance has been obtained and the City has approved such insurance, nor shall Vendor allow subcontractor to commence work until the same insurance requirements have been complied with by such subcontractor. Said insurance shall provide coverage to Vendor, any subcontractor performing

- work provided by this Contract, and the City. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of Vendor or subcontract, or by anyone directly or indirectly involved or employed by either of them.
- e) Approval of the insurance by the City shall not relieve or decrease the liability of the Vendor for any damages arising from Vendor's Work.
- f) Insurance shall provide, at a minimum, the types of insurance coverage, liability limits and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance. The insurance coverages listed below shall protect the Vendor and the City from claims for damages of bodily injury, including death resulting there-from, as well as claims for property damage, which may arise from operations under this Contract, whether such operation be by itself or by any subcontractor or by anyone directly employed by either of them, it being understood that it is the Vendor's obligation to enforce the requirements of this section in respect to any subcontractor employed for this project:
1. Commercial General Bodily injury and Property Damage Insurance and shall include:
 - a. Premises and Operations;
 - b. Owners and Vendors Protective;
 - c. Products Liability including completed Operations Coverage;
 - d. Contractual Liability;
 - e. Broad Form Property Damage;
 - f. Commercial Form (to include Extended Bodily Injury)
 - g. Employees as Additional Insured;
 - h. Explosion, Collapse and Underground Hazard;
 - i. Independent Vendors;
 - j. Personal Injury;
 - k. Stop Gap; and
 - l. Cross Liability Clause.
 2. Professional Liability Insurance including Errors and Omissions as appropriate to Work performed. Professional Liability Insurance including Errors and Omissions shall be written on a following form basis with limits of in no case less than \$1,000,000.
 3. Automobile Bodily Injury and Property Damage Insurance sufficient to cover any driving that is directly required for the performance of the stated work.
 4. General Liability (Commercial General Liability Insurance) shall be written with limits of liability of no less than \$1,000,000 combined single limits, per occurrence and \$2,000,000 in aggregate.

5. Umbrella Liability Insurance shall be written on a following form basis with limits of, in no case less than, \$2,000,000.
- g) Nothing contained in these insurance requirements is to be construed as limiting the extent of the Vendor's responsibility for payment of damages resulting from operations under this Contract.
 - h) The coverage provided by the General Liability and the Automobile Liability is primary to any insurance maintained by the City.
 - i) The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects to any claims, suit or judgement made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.
 - j) The Certificate of Insurance (ACCORD Form 25-S) cancellation clause shall be amended as follows:

Should any of the above described policies be cancelled, changed or reduced in coverage before the expiration date, the issue company will mail 30 day written notice through certified mail, to the certificate holder named at the left.
 - k) There shall be included in the general liability insurance contractual coverage sufficiently broad to insure the provisions of that Section herein entitled "Hold Harmless Clause."
 - l) Such insurance shall be maintained as required above, and any additional coverage's and limits as the City may from time to time specify to protect the City, its successor and assigns from any claims, losses harm, costs, liabilities, damages, and expenses (including but not limited to reasonable attorney's fees) that may arise out of any property damage, bodily injury (including death) or professional liability related to Work performed.
 - m) Failure to comply with provisions contained herein shall not waive the responsibility of the Vendor to provide the required protection.

9. ITB SUBMITTAL CHECKLIST

Vendor shall submit a bid in the following format; please note that **NO PDF or scanned ITB response submissions will be accepted. All submissions must be in MS Word and/or Excel.**

1. Vendor shall create one original response (**labeled “original”**) with original signature
2. The ITB name must be shown on the lower left-hand corner of the envelope.
3. The vendor shall submit the required documentation in the following order:

| Order | Section | Description |
|-------|---------|---|
| 1 | 1C | ITB Cover Sheet |
| 2 | 1D | Non-Collusion Certification |
| 3 | 4 | Acknowledgement of Scope of Work |
| 4 | 5A | Bid Submittal Sheets |
| 5 | 5B | Other Pricing Sheet |
| 6 | 5C, 5D | Cooperative Purchasing and Vendor Information |
| 7 | 7 | Customer References |
| 8 | 8 | Contract Review Acknowledgement |

This checklist is intended merely as an aid to the vendor in providing a response to this ITB. The vendor retains the sole responsibility for accuracy and completeness of the bid.