



# Request for Proposals

**ADVERTISED DATE:**

Request for Proposals (RFP) Title: Lynnwood Link Light Rail Consulting Services

RFP Number: 2721

Due Date: July 12, 2016 – 2:00 p.m. PDT

Buyer: Sarah Yeckley, Procurement Supervisor  
[syeckley@LynnwoodWA.gov](mailto:syeckley@LynnwoodWA.gov)  
 425-670-5166

Alternate Buyer: Karen Fitzthum, Procurement Manager  
[kfitzthum@LynnwoodWA.gov](mailto:kfitzthum@LynnwoodWA.gov)  
 425-670-5165

Sealed Proposals are hereby solicited and will **only** be received by:

City of Lynnwood

Procurement & Central Services Division  
 19100 44<sup>th</sup> Ave West  
 Lynnwood, WA 98036

**We acknowledge that all Addenda issued for this RFP have been examined as part of the proposal documents.**

Company Name

Address

City/State /Postal Code

Signature

Authorized Representative / Title

Email

Phone

Fax

Contact Name:

Phone

Email

## SECTION 1 PROPOSAL PREPARATION

### 1.1 Proposal Submission

Proposers are encouraged to use recycled paper in the preparation of additional documents submitted with this solicitation, and shall use both sides of paper sheets where practicable.

Submit two (2) copies of the proposal and attachments. One (1) original [marked ORIGINAL] shall be unbound, and one (1) electronic copy in PDF format (USB flash drive or CD). The Proposal delivery package must clearly identify the RFP number. In the event of any conflicts between the hard copy and electronic copy, the original hard copy will prevail.

Sealed proposals shall contain all required attachments and information and be submitted to The City (hereinafter "City") no later than the date, time and place stated on the front of this RFP or as amended. The proposals shall show the title and number, the due date specified, and the name and address of the Proposer on the face of the envelope. Proposers are cautioned that failure to comply may result in non-acceptance of the proposal. The Proposer accepts all risks of late delivery of mailed proposals or of misdelivery regardless of fault. Proposals properly and timely submitted will be publicly opened.

Proposals will only be accepted from Contractors able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one proposal for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a proposal, the City requests the company advise the Buyer by email if they desire to remain listed for the subject of this RFP and state the reason they did not submit a proposal.

### 1.2 Late Proposals

Proposals, modifications of proposals, received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

### 1.3 Cancellation of RFP or Postponement of Proposal Opening

The City reserves the right to cancel this RFP at any time. The City may change the date and time for submitting proposals prior to the date and time established for submittal.

### 1.4 Proposal Signature

Each proposal shall include a completed Proposal response form, the first page of this document, signed by an authorized representative of the Proposer.

### 1.5 Addenda

If at any time, the City changes, revises, deletes, clarifies, increases, or otherwise modifies the RFP, the City will issue a written Addendum to the RFP.

### 1.6 Questions and Interpretation of the RFP

No oral interpretations of the RFP will be made to any Proposer. All questions and any explanations must be requested in writing and directed to the Buyer no later than **five (5) Days** prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Communications concerning this RFP with other than the listed Buyer or Procurement staff may cause the Proposer to be disqualified. Any information modifying a solicitation will be furnished to all Proposers by addendum. **Communications concerning this proposal, with other than the listed Buyer may cause the Proposer to be disqualified.**

## 1.7 Schedule

<u>Day/Month/Year</u>	<u>Event</u>
<u>28/Jun/2016</u>	Public announcement of Request for Proposals
<u>05/Jul/2016</u>	Preproposal questions due, in writing
<u>12/Jul/2016</u>	Proposals due
<u>13/Jul/2016</u>	*Begin Evaluation of Proposals
<u>18/Jul/2016</u>	*Begin Interviews, if applicable
<u>25/Jul/2016</u>	*Select Consultant
<u>31/Aug/2016</u>	*Execute Contract

\*NOTE: Dates preceded by an asterisk are estimated dates. Estimated dates are for information only.

## 1.8 Examination of Proposal and Contract Documents

The submission of a proposal shall constitute an acknowledgement upon which the City may rely that the Proposer has thoroughly examined and is familiar with all requirements and documents pursuant with the RFP, including any addenda and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Proposer to comply with the above requirement shall in no way relieve the Proposer from any obligations with respect to its proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFP.

## 1.9 Cost of Proposals and Samples

The City is not liable for any costs incurred by Proposer in the preparation and evaluation of proposals submitted. Samples of items required must be submitted to location and at time specified. Unless otherwise specified, samples shall be submitted with no expense to the City. If not destroyed by testing, samples may be returned at the Proposer's request and expense unless otherwise specified.

## 1.10 Modifications of Proposal or Withdrawal of Proposal Prior to Proposal Due Date

At any time before the time and date set for submittal of proposals, a Proposer may submit a modification of a proposal previously submitted to the City. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal.

Proposals may be withdrawn by written notice received prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person by a Proposer or authorized representative provided their identity is made known and they sign a receipt for the proposal, but only if the withdrawal is made prior to the exact hour and date set for receipt

of proposals. All requests for modification or withdrawal of proposals, whether in person or written, shall not reveal the amount of the original proposal.

### **1.11 Proposal Withdrawal After Public Opening**

Except for claims of error granted by the City, no Proposer may withdraw a proposal after the date and time established for submitting proposals, or before the award and execution of a Contract pursuant to this RFP, unless the award is delayed for a period exceeding the period for proposal effectiveness.

Requests to withdraw a proposal due to error must be submitted in writing along with supporting evidence for such claim for review by the City. Evidence must be delivered to the City within two (2) Days after request to withdraw. The City reserves the right to require additional records or information to evaluate the request. Any review by the City of a proposal and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the City to discover any other proposal error or mistake, and the sole liability for any proposal error or mistake rests with the Proposer.

### **1.12 Error and Administrative Corrections**

The City shall not be responsible for any errors in proposals. Proposers shall only be allowed to alter proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by the City.

The City reserves the rights to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors.

### **1.13 Proposal Content Requirements**

A. The proposal shall contain the following items and follow the sequence outlined below:

**Sec. 1 & 2 Instructions and Information about the RFP Process**

Cover sheet with Proposer's Signature

**Sec 3 - Scope of Work and Proposal Requirements**

Optional – Executive Summary or Overview of Proposal – two pages maximum.

Proposer's Response to RFP Criteria

### **1.14 Compliance with RFP Terms, Attachments and Addenda**

A. The City intends to award a Contract based on the terms, conditions, attachments and addenda contained in this RFP. Attachment A provides a sample of the contract for your information. Proposers shall submit proposals, which respond to the requirements of the RFP.

B. The City reserves the right to reject any proposal for any reason including, but not limited to, the following –

- Any proposal, which is incomplete, obscure, irregular or lacking necessary detail and specificity;
- Any proposal that has any qualification, limitation, exception or provision attached to the proposal;

- Any proposal from Proposers who (in the sole judgment of the City) lack the qualifications or responsibility necessary to perform the Work;
  - Any proposal submitted by a Proposer which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
  - Any proposal for which a Proposer fails or neglects to complete and submit any qualifications information within the time specified by the City.
- C. In consideration for the City's review and evaluation of its proposal, the Proposer waives and releases any claims against the City arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation and presentation of proposals submitted in response to this RFP.

#### **1.15 Forms Required before Contract Signing**

- The Proposer shall submit within five (5) Days of notification from the City the insurance certificate and endorsement meeting the levels of coverage set forth in this RFP.
- W-9 if not already on file with the City.

#### **1.16 Collusion**

If the City determines that collusion has occurred among Proposers, none of the proposals from the participants in such collusion shall be considered. The City's determination shall be final.

#### **1.17 Protest Procedures**

The City has a process in place for receiving protests based upon the RFP or contract awards. The [protest procedure](http://www.ci.lynnwood.wa.us/City-Services/Bids-Proposals.htm) is available at <http://www.ci.lynnwood.wa.us/City-Services/Bids-Proposals.htm>.

## **SECTION 2 PROPOSAL EVALUATION AND CONTRACT AWARD**

### **2.1 Proposal Evaluation**

- A. The City will evaluate proposals using the criteria set forth in this RFP. If deemed necessary, written and/or oral discussions, site visits or any other type of clarification of proposal information may be conducted with those Proposers whose proposals are found to be potentially acceptable.
- B. The City may find that a Proposer appears fully qualified to perform the Contract or it may require additional information or actions from a Proposer. In the event the City determines that the proposal is not within the Competitive Range the City shall eliminate the proposal from further consideration.
- C. The evaluation of Proposers' proposals and additional information may result in successive reductions of the number of proposals that remain in the Competitive Range.
- D. The City may enter negotiations with one Proposer to finalize Contract terms and conditions. Negotiation of a Contract shall be in conformance with applicable federal, state and local laws, regulations and procedures. The objective of the negotiations shall be to reach agreement on all provisions of the proposed Contract. In the event negotiations are not successful, the City may cease negotiations with the selected contractor and either commence negotiations with the second ranked proposer, or reject all proposals.
- E. Contract award, if any, shall be made by the City to the responsible Proposer whose proposal best meets the qualifications of the RFP, and is most advantageous to the City. The City is not required to award a Contract to the Proposer. The City shall have no obligations until a Contract is signed between the Proposer and the City.

### **2.2 Responsive and Responsible**

#### Responsive

The City will consider all the material submitted by the Proposer, and other evidence it may obtain otherwise, to determine whether the Proposer is in compliance with the terms and conditions set forth in this RFP.

#### Responsible

In determining the responsibility of the Proposer, the City may consider:

- the ability, capacity and skill to perform the Contract and provide the service required;
- the character, integrity, reputation, judgment and efficiency;
- the quality and timeliness of performance on previous contracts with the City and other agencies, including, but not limited to, the effort necessarily expended by the City and other agencies in securing satisfactory performance and resolving claims;
- compliance with federal, state and local laws and ordinances relating to public contracts;
- other information having a bearing on the decision to award the Contract.

Failure of a Proposer to be deemed responsible or responsive may result in the rejection of a proposal.

### 2.3 Financial Resources and Auditing

If requested by the City, prior to the award of a contract, the Proposer shall submit proof of adequate financial resources available to carry out the execution and completion of work required by this contract.

The City reserves the right to audit the Contractor throughout the term of this contract to assure the Contractor's financial fitness to perform and comply with all terms and conditions contained within this contract. The City will be the sole judge in determining the Contractor's financial fitness in carrying out the terms of this contract.

### 2.4 Evaluation Criteria and Proposal Scoring

Each proposal has a total possible score of **100** points with the points assigned as follows:

Qualification Criteria	Points
Demonstrates public sector project management experience in the review of major multi-year, multi-phase, infrastructure projects.	25
Demonstrates understanding of applicable codes to the Project.	10
Demonstrates substantial experience coordinating project management efforts between multiple public agencies and a variety of subject-matters of expertise.	20
Consultant team has ability to provide subject-matter experts across all related disciplines	20
Team is led by multi-discipline project manager with experience working on light rail transit projects.	25
Total	100

### 2.5 Public Disclosure of Proposals

This procurement is subject to the Washington Public Records Act, RCW (Revised Code of Washington) 42.56 et seq. Proposals submitted under this RFP shall be considered public documents unless the documents are exempt under the public disclosure laws. After a decision to award the contract has been made, the proposals shall be available for inspection and copying by the public.

If a Proposer considers any portion of its proposal to be protected under the law, the Proposer shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the City determines that the material is not exempt from public disclosure law, the City will notify the Proposer of the request and allow the Proposer ten (10) Days to take whatever action it deems necessary to protect its interests. If the Proposer does not take such action within said period, the City will release the portions of the proposal deemed subject to disclosure. By submitting a proposal, the Proposer assents to the procedure outlined in this subsection and shall have no claim against the City on account taken under such procedure.

**PROPOSAL LABEL**

Complete the form below (or reasonable facsimile) and affix to the exterior lower left hand corner of the submission envelope(s), box(es), etc.

<b>URGENT – SEALED PROPOSAL ENCLOSED</b> <b>Do Not Delay – Deliver Immediately</b>	
<b>URGENT</b>	 <b>City of Lynnwood Procurement and Central Services Division</b> 19100 44 <sup>th</sup> Ave W Lynnwood, WA 98046
	<b>Proposal Number.</b> 2721
	<b>Proposal Title</b> Lynnwood Link Light Rail Consulting Services
	<b>Opening Date</b>
	<b>Firm Name</b>
<b>URGENT</b>	

## SECTION 3 SCOPE OF SERVICES

### 3.1 Scope of Services

#### Introduction

The City of Lynnwood (“City”) is seeking qualifications proposals from professional consulting firms with expertise in the coordination, plan review, permitting, code compliance, and inspection of major construction projects, with a special emphasis on light rail transit systems and associated infrastructure.

#### Background

The Central Puget Sound Regional Transit Authority (Sound Transit) is designing for construction the Lynnwood Link Extension (“LLE or Project”) light rail project approved by voters in 2008 that extends 8.5 miles north from Northgate Transit Center to the Lynnwood Transit Center. The City requires additional professional resources to manage Sound Transit’s development of LLE within the City’s boundaries and rights-of-way and to accomplish an expedited timeline of the Sound Transit Project.

The City and Sound Transit have entered into an agreement to identify permits required by the City for the construction of the Project and to provide for Sound Transit to reimburse the City for expenses related to expedited and prioritized Project Design Submittal reviews, “Over-the-shoulder” reviews for 30, 60 and 90 percent submittals, issuance of permits, and possible future expedited construction inspections (under a separate addendum/agreement), related to the final design and pre-construction phase, essential to the scheduled construction of the Project.

#### Example/Anticipated Scope of Work

This RFP does not include a detailed scope of work, nor does it call for submitters to propose a detailed, task-by-task description of the consultant’s work program. After selection of a consultant, the City will provide a draft detailed work program for the purpose of negotiating a final contract. The final detailed work plan will be prepared in consultation with the consultant and Sound Transit.

The consultant will provide civil, traffic, roadway, utilities, drainage, rights-of-way, structural (including parking garage and light rail transit systems), geotechnical, environmental, mechanical, electrical, and architectural design expertise. The consultant will work with City staff to coordinate the design review, permitting, code compliance, and inspection of LLE throughout a GCCM process.

The consultant will provide a full-time City Coordinator (“Coordinator”) to represent the City on the Project. The Coordinator will be required to work collaboratively on a daily basis with City and Sound Transit staff and consultants working directly for the City to facilitate Sound Transit’s Project. An organized and specialized Coordinator will oversee the multiple disciplines associated with Sound Transit’s design team and City staff. The consultant Coordinator will provide:

- Central coordination of all formal and informal “Over-the-shoulder” Design Submittal reviews and comments between Sound Transit and all involved City departments. *“Over-the-shoulder” review is defined as the City and/or its consultant team providing feedback and concurrence on design and code issues that arise during Sound Transit’s and/or its project designers’ development of design submittals.*
- Confirmation design submittals are completed per a pre-agreed upon submittal criteria to reduce the likelihood of the City finding submittals incomplete and cause schedule delay due to resubmittal requirements.
- Resolution of any inconsistencies among review comments across the City departments and City utilities and shall provide Sound Transit with consistent and consolidated review, comments, and decisions.
- All City design review comments accurately documented in the correct Sound Transit design review format.

- Participation in regularly scheduled bi-weekly project-level coordination meetings.
- Identification and disclosure to Sound Transit as soon as practicable any other projects or proposals (e.g. utility projects public works projects, transportation projects, private development projects) that have the potential to conflict or interfere with the design and construction of the Project.
- Coordination with the Sound Transit Project Manager to schedule and facilitate needs-based review meetings between Sound Transit and/or its Project Designers and City staff and/or its Consultant Team to evaluate and comment on Project design elements. The purpose of these needs-based review meetings is to keep the City staff apprised of major developments in the design process, seek feedback or formal concurrence from the City on aspects of the design as it is progressing, and determine whether previously identified corrections are being adequately addressed prior to the next Design Submittal.
- Other duties and responsibilities as defined in the Scope of Work agreed upon between the City and its Consultant Team, with concurrence from Sound Transit.

#### **4(A) Minimum Qualifications**

1. Provide a narrative about your team's experience providing five or more continuous years of public sector consulting in the area of coordination, plan review, permitting, code compliance, and inspection of major construction projects. Specify the public agencies you served, project/service type, and the length and depth work conducted. Five years of experience is the minimum amount acceptable.
2. Provide a narrative about your team's working knowledge and experience reviewing projects that conform to 2015 International Building, Fire, Mechanical, and Fuel Gas Codes; 2012 Uniform Plumbing Code; 2014 National Electric Code; 2009 ANSI-A117.1 Code; 2005 DOE Stormwater Manual; 1014 NFPA 130; Lynnwood FMO Published Standards; and Lynnwood Municipal Code.
3. Provide a description of your team including firm(s) profile and proposed team member resumes, emphasizing specific qualifications of your proposed Coordinator.

#### **4(B) Specific Desirable Qualifications**

1. Describe your team's experience working on light rail transit systems, including and experience reviewing station design, parking garage facilities, and associated infrastructure improvements.
2. Provide examples of projects which required your team to work collaboratively between public sector agencies and their consultants, coordinating across multi-discipline subject-matter experts.
3. Outline how the City/consultant relationship and project management reporting will be handled with the consultant representing the City offsite, working with multiple agencies and consulting teams.
4. Identify what multi-disciplinary and subject-matter expertise will be housed internally or with subcontractors as part of your team.

#### **4(C) Summary**

Explain in one page or less how your solution will differentiate you from other consultants and why we should choose you as our successful consultant. List the unique features that give your company a competitive edge in conducting this work.



**THIS CONTRACT #2721** ("Contract") is entered into by **THE CITY**, Washington, a political subdivision of the State of Washington (the "City"), and \_\_\_\_\_ (the "Contractor"), whose address is \_\_\_\_\_. The City is undertaking certain activities related to, Lynnwood Link Light Rail Consulting Services and, the City desires to engage the Contractor to provide Work in connection with such undertakings of the City,

**NOW, THEREFORE**, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

**I. CONTRACT DOCUMENTS**

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

1. Contract Amendment(s)
2. Contract, which consists of this page, the Terms and Conditions, and the following:
  - Scope of Work .....Exhibit A
  - Price Attachment (to be determined during negotiation phase).....Exhibit B
  - Certificate(s) of Insurance and Policy Endorsement ..... Exhibit C
  - Other Exhibits and attachments (if applicable)
3. Request for Proposal (if applicable - as modified by any addenda)
4. Contractor's Proposal (if applicable)

**II. CONTRACT TERM**

This Contract shall be effective when countersigned by The City and shall expire \_\_\_\_\_ years after the date of the City's signature, unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

**III. CONTRACT AMOUNT**

The City shall reimburse the Contractor upon Acceptance of the Work specified in this Contract in an amount not to exceed \$\_\_\_\_\_, payable as set forth in Exhibit B].

**IV. ACKNOWLEDGEMENT AND AUTHORITY**

The parties expressly agree that this Contract shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

The parties executing this Contract have authority to sign and bind its represented party to this Contract.

**COMPANY NAME**

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Authorized Signature

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Name and Title (Print or Type)

Date

Accepted: \_\_\_\_\_

**THE CITY**

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Authorized Signature

---

Name and Title (Print or Type)

Date

Accepted: \_\_\_\_\_

Approved as to form only:

The City Prosecuting Attorney

## SECTION 1 DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: A written determination by the City that the Contractor has completed the Work in accordance with the Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or Scope of Work, signed by both parties, with or without notice to the sureties.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the City for the performance of Work under the Contract.

Day: Calendar day.

LMC: The Lynnwood Municipal Code.

Measurable Amount of Work: A definitive allocation of an employee's time that can be attributed to Work performed under this Contract, but that is not less than a total of one hour in any one week period.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the City to manage the project on a daily basis and who may represent the City for Contract administration.

RCW: The Revised Code of Washington.

Scope of Work (SOW): An exhibit to the Contract consisting of a written description of the Work to be performed.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

## **SECTION 2 GENERAL PROVISIONS**

### **2.1 Administration**

The Contractor shall be responsible for performing the Work. The City is not a party to defining the division of Work between the Contractor and its Subcontractors, if any.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform the Work under this Contract.

### **2.2 Warranty**

Contractor warrants that the Work shall in all material respects conform to the requirements of this Contract. Contractor further warrants that qualified professional personnel with in-depth knowledge shall perform the Work in a timely and professional manner, and that the Work shall conform to the standards generally observed in the industry for similar Work.

### **2.3 Payment Procedures; Prompt Payment of Subcontractors**

For Work Accepted by the City the Contractor shall furnish invoices to the project manager identified in nocites section of this contract. All invoices shall contain the complete description of the products, services, phases or milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The City will not be bound by prices contained in an invoice that are higher than those in Exhibit B, or if not used as part of this Contract, then the current price list for this Contract approved by the City. Within thirty (30) Days after receipt of an invoice, the City shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the City will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the City.

### **2.4 Pricing**

Prices shall remain firm for the duration of the Contract. The Contractor may request a price change(s) in writing delivered to the City. The Contractor shall provide documentation satisfactory to the City in support of its request, such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s). The City reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about modifications to the request, or deny the request in its entirety. Any change in pricing granted by the City shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

### **2.5 Contract Amendment**

All changes to the Contract shall be made in writing through a Contract Amendment. No oral statement or other conduct by the City shall change or modify the Contract. The City may perform an analysis of cost, price or schedule to determine the reasonableness of the proposed change to the Contract.

## 2.6 Changed Requirements

New federal, state and City laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through Section 2.7, Contract Amendment.

## 2.7 Taxes, Licenses, and Certificate Requirements

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the City immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

## 2.8 Notices

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

THE CITY	CONTRACTOR
Project Manager – XXXX	
title	
City of Lynnwood	
4114 – 198 <sup>th</sup> St SW	
Lynnwood, WA 98036	
XXX-XXX-XXXX	
<a href="mailto:XXXX@LynnwoodWA.gov">XXXX@LynnwoodWA.gov</a>	

## 2.9 Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of the Code of Federal Regulations and the Contractor is required to verify that none of the Contractor, its principals, or affiliates, are excluded or disqualified from receiving contract award by the Federal Government. The Contractor is required to comply with CFR and must include the requirement to comply with the CFR in any lower tier covered transaction it enters into. By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of the CFR

while performing this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **2.10 Commitment of Firms and Key Personnel**

The contractor shall provide the same firms and key personnel for work under this contract as proposed and will ensure they will be available to provide services for this contract. When a member of the Contractor's team, including subcontractors, is no longer participating in the contract, the Contractor must notify the Buyer in writing and provide a detailed explanation and proposed remedy for the lack of availability. The City, in its sole discretion, may accept or reject a substitution in the team. The Contractor shall be responsible for providing acceptable firms and personnel for the execution of the work. The City will only consider substitutions based on circumstances beyond the Contractor's control.

## **SECTION 3      LEGAL RELATIONS; INDEMNITY AND INSURANCE**

### **3.1      Independent Status of Contractor**

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

### **3.2      Indemnification and Hold Harmless**

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the City, the Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the City only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the City and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the City on account of such litigation or claims. In the event that the City incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Section 3.2, or to enforce the provisions of this Section 3.2, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this Section 3.2 shall affect and/or alter the application of any other section contained within this Contract.

### 3.3 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the City evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the City shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the City, deliver to the City all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to provide such insurance in a timeframe acceptable to the City shall enable the City to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

### 3.4 Insurance Requirements

Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the City with certificates of insurance and endorsements required by this Contract. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability, errors and omissions, will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

#### A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$ [REDACTED] combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$ [REDACTED] aggregate limit. CG 00 01 current edition, including Products and Completed Operations
2. Professional Liability, Errors and Omissions: \$ [REDACTED] Per Claim and in the Aggregate
3. Automobile Liability: \$ [REDACTED] combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1.
4. Workers' Compensation: Statutory requirements of the State of residency, and
5. Employers' Liability or "Stop Gap" coverage: \$ [REDACTED]

B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The City, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The City requires this Endorsement to complete the Contract.**

All Policies:

1. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. Any deductibles or self-insured retentions must be declared to, and approved by, the City. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the City and shall be the sole responsibility of the Contractor
3. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the City.
4. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the City.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with the appropriate certificates and endorsements, for approval.

C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.**

D. Work Site Safety

The Contractor shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor’s compliance with these provisions.

## **SECTION 4 CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES**

### **4.1 Conflicts of Interest and Non-Competitive Practices**

- A. Conflict of Interest - By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the City. The City shall require that the Contractor take immediate action to eliminate the conflict.
- B. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Contractor represents that:
1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
  2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the City or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
  3. Any Person having an existing contract with the City or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the City by offering any valuable consideration, thing or promise, in any form to any City official or employee shall have his or her current contracts with the City canceled and shall not be able to bid on any other City contracts for a period of two (2) years.
- C. Disclosure of Current and Former City Employees - To avoid any actual or potential conflict of interest or unethical conduct:
1. City employees or former City employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the City or within one (1) year after leaving City employment if he/she participated in determining the Work to be done or processes to be followed while a City employee.
  2. Contractor shall identify at the time of offer current or former City employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former City employees involved in this Contract may result in termination of this Contract.
  3. After Contract award, the Contractor is responsible for notifying the City's Project Manager of current or former City employees who may become involved in the Contract any time during the term of the Contract.

## **SECTION 5 RECORDS AND AUDITS**

### **5.1 Retention of Records, Audit Access and Proof of Compliance with Contract**

#### **A. Retention of Records**

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

#### **B. Audit Access**

The Contractor shall provide access to its facilities, including those of any Subcontractors, to the City, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The City shall give reasonable notice to the Contractor of the date on which the audit shall begin.

### **5.2 Audit Exception**

The Contractor agrees that it is financially responsible for and will repay the City all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

### **5.3 Federal Funding Audit**

If the Contractor expended a total of \$500,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than \$500,000.00. The Contractor shall provide one copy of the audit report to each City division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor's fiscal year.

### **5.4 Public Records Requests**

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the City under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the City will determine whether the material should be made available under the Act. If the City determines that the material is subject to disclosure, the City will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the City will release the portions of record(s) deemed by the City to be subject to disclosure. The City shall not be liable to the Contractor for inadvertently releasing records pursuant to a

disclosure request not clearly identified by the Contractor as “CONFIDENTIAL,”  
“PROPRIETARY” or “BUSINESS SECRET.”

## **SECTION 6 INTELLECTUAL PROPERTY**

### **6.1 Patents, Copyrights and Rights in Subject Data**

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the City. The City in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the City.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the City, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the City. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the City prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

### **6.2 Nondisclosure of Data**

Data provided by the City either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the City data in any form without the prior express written approval of the City.

### **6.3 Non-Disclosure Obligation**

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the City or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the City's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the City of such requirement prior to disclosure.

## **SECTION 7 CLAIMS AND APPEALS; DISPUTE RESOLUTION**

### **7.1 Claims and Appeals**

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Buyer and Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract documents. The City reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Central Services Division Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager on claims for additional time or compensation shall be a condition precedent to litigation.

At all times, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this Section 8.1 as to any claim and appeal shall operate as a waiver and release of that claim and appeal and an acknowledgment of prejudice to the City.

### **7.2 Mediation and Arbitration**

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through the required claims and appeal process set forth in Section 8.1, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative dispute resolution process prior to commencing litigation.

### **7.3 Applicable Law and Forum**

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in The City Superior Court or U.S. District for the Western District of Washington, in Seattle.

## **SECTION 8      TERMINATION**

### **8.1    Termination for Convenience/Default/Non-Appropriation**

#### **A.    Termination for Convenience**

This Contract may be terminated by the City without cause, in whole or in part, upon providing the Contractor ten (10) Days' advance written notice of the termination. If the Contract is terminated pursuant to this Section 9.1.A, the City will be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination.

#### **B.    Termination for Default**

If the Contractor does not perform the Work or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the City may terminate this Contract, in whole or in part, for default as follows:

1. A "notice to cure" shall be served on the Contractor by certified or registered first class mail in accordance with Section 2.10. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the City with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the City, the City may terminate the Contract by serving a "notice of termination" in accordance with Section 2.10 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the City caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the City to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the City hereunder in any manner.

#### **C.    Termination for Non-Appropriation**

1. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the City may, upon written notice to the Contractor, terminate this Contract in whole or in part.

If the Contract is terminated pursuant to this Section 9.1.C: 1) the City shall be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination; and, 2) the Contractor shall be released from any obligation under this Contract affected by the termination or a related purchase order to provide further Work pursuant to the Contract.

2. Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the City Council of sufficient funds to support the Work described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year.

## **SECTION 9 MISCELLANEOUS**

### **9.1 Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as The City Policy Fin10-1 (AP), section 6.1.3 is followed. If an assignment is approved, it shall be effective upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

### **9.2 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the City shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

### **9.3 No Third Party Beneficiary**

This Contract is for the sole and exclusive benefit of the City and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

### **9.4 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

### **9.5 Non-Waiver of Breach**

No action or failure to act by the City shall constitute a waiver of any right or duty afforded to the City under the Contract; nor shall any such action or failure to act by the City constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the City in writing.

## **END OF TERMS AND CONDITIONS**