

Request for Proposals



City of Lynnwood
Procurement and Central Services Division
425-670-5000

ADVERTISED DATE:

Request for Proposals (RFP) Title: Development Fee Study

RFP Number: 2793

Due Date: Monday, November 21, 2016 - 2:00 p.m.

Buyer: Karen Fitzthum, kfitzthum@lynnwoodwa.gov 425-670-5165

Alternate Buyer: Sarah Yeckley, syeckley@lynnwoodwa.gov 425-670-5166

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

City of Lynnwood

Procurement Services Division
19100 44th 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.

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

Day/Month/Year	Event
<u>November 7, 2016</u>	Issue of Request for Proposals
<u>November 21, 2016</u>	Proposals due
<u>November 22, 2016</u>	*Begin Evaluation of Proposals
<u>November 29, 2016</u>	*Begin Negotiations
<u>December 15, 2016</u>	*Execute Contract

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

1.8 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.

1.9 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.

1.10 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.

1.11 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.

1.12 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

Price Proposal

Contract: Identify any exceptions to terms and conditions and attachments with a signed letter from an attorney or authorized representative

B. Submit one original and 3 copies of the proposal and attachments. One original [marked ORIGINAL] shall be unbound.

1. Proposers shall submit with their proposal an exact duplicate of the original proposal on a CD which includes both a pdf and a native format copy of the proposal.

1.13 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. Proposers shall submit proposals, which respond to the requirements of the RFP.
- B. Proposers are strongly advised to not take exceptions to the terms, conditions, attachments and addenda; exceptions may result in rejection of the proposal. An exception is not a response to a proposal requirement. If an exception is taken, a 'Notice of Exception' must be submitted with the proposal. The 'Notice of Exception' must identify the specific point or points of exception and provide an alternative.
- C. 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, from Proposers who are not approved as being compliant with the requirements for equal employment opportunity; and
 - Any proposal for which a Proposer fails or neglects to complete and submit any qualifications information within the time specified by the City.
- D. The City may, at its sole discretion, determine that a proposal with a 'Notice of Exception' merits evaluation. A proposal with a 'Notice of Exception' not immediately rejected may be evaluated, but its competitive scoring shall be reduced to reflect the importance of the exception. Evaluation and negotiation shall only continue with the Proposer if the City determines that the proposal continues to be advantageous to the City.
- E. 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.
- F. Proposals shall address all requirements identified in this RFP. In addition, the City may consider proposal alternatives submitted by Proposers that provide cost savings or enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the City's best interests. Proposal alternatives shall be clearly identified.

1.14 Acceptance of Contract, Attachments and Addenda

Proposer(s) shall review the Contract, and all its attachments, and submit a signed letter by their attorney or authorized legal representative stating they intend to comply with all the terms and conditions. The signed letter shall be submitted with the proposal.

If there are exceptions taken to the terms and conditions in Attachment A Contract and any of its attachments, the Proposer's attorney or authorized legal representative shall sign an exception letter describing reasoning for the exceptions and include the exception letter and Attachment A Contract as an attachment to the proposal, identifying the exceptions and proposed changes. All proposed changes shall be tracked the Contract using the tracking changes feature in Microsoft Word®.

The project schedule is such that it requires a very efficient proposal review and negotiation period. It is very important that any possible roadblocks or issues the Proposer may have with the terms and conditions are identified during the proposal process and resolved prior to proceeding with the Contract negotiations.

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 Proposal Price and Effective Date

- A. The proposal price shall include everything necessary for the prosecution and completion of Work under the Contract including but not limited to furnishing all materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be provided otherwise in this RFP. Proposed Prices shall include all freight charges, FOB to the designated delivery point. Washington State sales/use taxes and Federal excise taxes shall not be included in the proposal price. The City shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The City is exempt from Federal excise taxes. All other government taxes, duties, fees, royalties, assessments and charges shall be included in the Proposal price.
- B. In the event of a discrepancy between the unit price and the extended amount for a proposal item, the City reserves the right to clarify the Proposal.
- C. The proposal shall remain in effect for 90 Days after the proposal due date, unless extended by agreement.

1.18 Procedure When Only One Proposal Is Received

If the City receives a single responsive, responsible proposal, the City may request an extension of the proposal acceptance period and/or conduct a price or cost analysis on such proposal. The Proposer shall promptly provide all cost or pricing data, documentation and explanation requested by the City to assist in such analysis. By conducting such analysis, the City shall not be obligated to accept the single proposal; the City reserves the right to reject such proposal or any portion thereof.

1.19 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. Identified deficiencies, technical requirements, terms and conditions of the RFP, costs or prices, and clarifications may be included among the items for discussion. The discussions are intended to give Proposers a reasonable opportunity to resolve deficiencies, uncertainties and clarifications as requested by the City and to make the cost, pricing or technical revisions required by the resulting changes. In addition, the City may request additional business and administrative information.
- 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. If applicable to the procurement, the firms remaining in the Competitive Range may be invited to continue in the proposal evaluation process, and negotiations.
- D. Upon completion of discussions, the City may issue to all remaining potentially acceptable Proposers within the competitive range a request for Best and Final Offers. The request shall include notice that discussions are concluded, an invitation to submit a revised proposal with a Best and Final Offer, and a new submittal date and time.
- E. The City may enter negotiations with one or more Proposers 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 reject proposals.
- F. The City reserves the right to make a Contract award without written and/or oral discussions with the Proposers and without an opportunity to submit Best and Final Offers when deemed to be in the City's best interests. Contract award, if any, shall be made by the City to the responsible Proposer whose proposal best meets the requirements of the RFP, and is most advantageous to the City, taking into consideration price and the other established evaluation factors. The City is not required to award a Contract to the Proposer offering the lowest price. The City shall have no obligations until a Contract is signed between the Proposer and the City. The City reserves the right to award one or more contracts as it determines to be in its best interest.

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;
- financial resources to perform the Contract properly and within the times proposed;
- 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:

	Proposal Evaluation Criteria	Points
Pricing	Proposal Price, Proposers may be requested to submit revised pricing information after demonstrations	40
Methodology and Approach to Requirements	Ability to meet the requirements of the Scope of Work (SOW), approach to delivery of the services, methodology and expectation of success	30
Management	Vendor Qualifications Customer References Financial Stability Vendor Customer Site Visits Company Information	20
Terms And Conditions	Compliance with Contract Terms and Conditions	10
	Total possible Written	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.

URGENT – SEALED PROPOSAL ENCLOSED		
Do Not Delay – Deliver Immediately		
U R G E N T		City of Lynnwood Procurement Services Division 19100 44 th Ave W Lynnwood, WA 98046
		Proposal Number.
		Proposal Title
		Opening Date
		Firm Name
	U R G E N T	

SECTION 3 SCOPE OF WORK

3.1 Introduction

Community Development Department plays a key role in working with the community and electeds to plan for the future and implement those plans. Our work includes development approval, environmental protection, insuring safe buildings, eliminating nuisances and hazards, annexations, representing Lynnwood regionally and meeting the human services needs of our community. In 2017 the Dept. will be assuming responsibility for issuance of Business Licenses.

Community Development also coordinates the work of two other Departments in staffing the City's Permit Center operation. Public Works and Fire Marshal staff also review and issue permits related to new construction and undertake periodic post-construction inspections.

A range of fees applies to the processes managed by departments in the Permit Center. The City wishes to conduct a comprehensive study of this work, which will analyze the fee structure and the cost of providing the services.

The City is adopting budgeting for outcomes and developing performance measures to help inform each department, office and elected officials on the purpose and success of programs. The Community Development Department has developed a proposed budget using these tools. This work will assist the Department in planning improvements to fee structure and the delivery of services.

The City has a goal of understanding the real costs of providing these services and adopting a fee structure that aims to recover the costs to a reasonable extent.

3.2 Scope of Study

A. Comprehensive Fee/ Cost analysis should include at least the following:

1. All planning approvals: subdivisions, PDR (site plan reviews) CUP's, lot splits, rezones, etc.
2. All building permitting services: plan reviews, building/mechanical/electrical, expedited reviews and overtime inspections, etc.
Business License issuance
3. All Public Works permitting associated with new development: grading, utilities, water meters, wetland and critical areas reviews, stormwater systems including periodic post construction inspections; FOG install and on-going inspections, site inspections, tree removal, etc.
4. Fire Marshal: all new development reviews, fire suppression systems, alarm systems, install and periodic testing and annual site inspections of commercial buildings.

Other areas of work not listed here, but identified by the consultant necessary to achieve a comprehensive study should be included in the proposal.

B. Timeline

This study should begin in December of 2016 and be concluded in the first quarter of 2017.

3.3 Proposal structure and content

See 1.2 for structure of the document, including the cover page and adherence to the proposed terms and conditions.

Proposal responses should include these items:

Pricing	The City is requesting a price proposal that is structured as a lump sum contract, paid at the conclusion of the study. The City anticipates the estimated price of this study to be \$30,000. Proposals must be specific of the level of analysis and detail that can be included in the study to ensure reliable results.
Methodology and Approach to Requirements	Describe in detail how your firm will conduct the study, include how data will be gathered, if comparisons with other organizations will be included, what the City should be prepared to provide, and how recommendations will be developed and delivered.
Management	Provide resumes for staff proposed to conduct the study for your firm. Include a description of the experience on similar study contracts. Describe the qualifications of the firm to demonstrate the resources that support the staff to be assigned to the work. Provide references for 3 customers for which the firm or staff have conducted studies, including name, title, phone and email.
Terms And Conditions	Indicate in your proposal if your firm will accept the Contract Terms and Conditions in Attachment A. The City wishes to expedite the award of the contract to start the work in December, and does not intend to negotiate the basic terms and conditions of the contract.



THIS CONTRACT # _____ ("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, _____ 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:

Contract Amendment(s) Contract, which consists of this page, the Terms and Conditions, the Scope of Work, Price, Certificate(s) of Insurance and Policy Endorsement and Other Exhibits and attachments (if applicable) 2) Request for Proposal (if applicable - as modified by any addenda) 3) 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. 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

THE CITY

Authorized Signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date

Date

Accepted: _____

Accepted: _____

TERMS AND CONDITIONS

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 the contract, 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

This is a one time, fixed fee contract, and prices shall remain firm for the duration of the Contract. 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.

2.5 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.

2.6 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.

2.7 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 -	
Seattle, WA	
206-	
xxxxxx@kingCity.gov	

2.8 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.

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: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: \$1,000,000

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.

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 Other Public Agency Orders

Other federal, state, City and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The City does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

If the contractor agrees to extend this contract to other governmental agencies, this contract is subject to an Administrative Fee (Fee) of 1% (.01). The Fee shall be based on total sales made to each governmental agency outside of The City's Departments, Divisions and Agencies, less sales tax, freight and any credits(s). The Fee shall be paid by the contractor, payable and remitted to The City Procurement and Contract Services Section not less than twice per year, on July 31st and January 31st for the first and second half of the year sales respectively. Fees submitted shall be accompanied by a sales report, reference the contract number, and show the total sales to other governmental agencies, excluding The City. The contractor shall not invoice the Fee to any contract user.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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