

RFP 3178 – Permit Tracking and Plans Review Software Solution

Exhibit F – Technology Insurance and Indemnity Requirements

Indemnification / Hold Harmless

Consultant shall defend, indemnify and hold the City of Lynnwood, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City of Lynnwood.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City of Lynnwood, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City of Lynnwood's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written as least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury. The City of Lynnwood shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City of Lynnwood using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Technology Errors & Omissions (E&O)

5. Network Security (Cyber) and Privacy Insurance shall include, but not be limited to, coverage, including defense, for the following losses or services:

Liability arising from theft, dissemination, and/or use of City of Lynnwood confidential and personally identifiable information, including but not limited to, any information about an individual maintained by the City of Lynnwood, including (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information regardless of how or where the information is stored or transmitted.

Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or City of Lynnwood data, including denial of service, unless caused by a mechanical or electrical failure; (iii) introduction of any unauthorized software computer code or virus causing damage to the City of Lynnwood or any other third party data.

Lawfully insurable fines and penalties resulting or alleging from a data breach.

Event management services and first-party loss expenses for a data breach response including crisis management services, credit monitoring for individuals, public relations, legal service advice, notification of affected parties, independent information security forensics firm, and costs to re-secure, re-create and restore data or systems.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Technology Errors & Omissions (E&O) shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Network Security (Cyber) and Privacy Insurance shall be written with limits no less than \$1,000,000 per claim \$1,000,000 policy aggregate for network security and privacy coverage, \$100,000 per claim for regulatory action (fines and penalties), and \$100,000 per claim for event management services.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City of Lynnwood. Any insurance, self-insurance, or self-insured pool coverage maintained by the City of Lynnwood shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

The Consultant shall furnish the City of Lynnwood with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

H. Notice of Cancellation

The Consultant shall provide the City of Lynnwood with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City of Lynnwood may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City of Lynnwood on demand, or at the sole discretion of the City of Lynnwood, offset against funds due the Consultant from the City of Lynnwood.

J. City of Lynnwood Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City of Lynnwood shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished the City of Lynnwood evidences limits of liability lower than those maintained by the Consultant.

K. Safeguarding of Personal Information

The Consultant shall not use or disclose Personal Information, as defined in RCW 19.255.010, in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Consultant agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of Personal Information.

The Consultant shall ensure its directors, officers, employees, subcontractors or agents use Personal Information solely for the purposes of accomplishing the services set forth in the Agreement.

The Consultant shall protect Personal Information collected, used, or acquired in connection with the Agreement, against unauthorized use, disclosure, modification or loss.

The Consultant and its sub-consultants agree not to release, divulge, publish, transfer, sell or otherwise make Personal Information known to unauthorized persons without the express written consent of City of Lynnwood or as otherwise authorized by law.

The Consultant agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of Personal Information.

The Consultant shall make the Personal Information available to amend as directed by City of Lynnwood and incorporate any amendments into all the copies maintained by the Consultant or its subcontractors. Consultant shall certify its return or destruction upon expiration or

termination of the Agreement and the Consultant shall retain no copies. If Consultant and City of Lynnwood mutually determine that return or destruction is not feasible, the Consultant shall not use the Personal Information in a manner other than those permitted or authorized by state and federal laws.

The Consultant shall notify City of Lynnwood in writing immediately upon becoming aware of any unauthorized access, use or disclosure of Personal Information. Consultant shall take necessary steps to mitigate the harmful effects of such use or disclosure. Consultant is financially responsible for notification of any unauthorized access, use or disclosure. The details of the notification must be approved by City of Lynnwood. Any breach of this clause may result in termination of the Agreement and the demand for return of all Personal Information.