



CITY OF LYNWOOD, CALIFORNIA

REQUEST FOR PROPOSAL

For Landscape Architect and Engineering Services

FOR

**Lynwood Park Infiltration, Restoration and Water Quality
Improvement Project (CIP # 4011.68.037)**

Issue Date: March 21, 2018

Proposals Due By: Monday, April 23, 2018 at 5:00 PM, PST

City of Lynwood
Request for Proposal
Lynwood Park Infiltration, Restoration, and Water Quality Improvement Project

SUMMARY SHEET

1. Project Name: Lynwood Park Infiltration, Restoration and Water Quality Improvement Project (Project)
2. Location: Southeast corner of Birch St. and Spruce St.
3. Requested Services: Architectural and Engineering Services for the Project.
4. RFP Intent: The City is requesting proposals from experienced architectural and engineering firms to prepare plans, specifications and engineering cost estimate for the Project.

The Project involves the replacement of asphalt at the Lynwood Park parking lot with permeable pavers, preparation of space for planting of native plants, shrubs, and establishment of bio-swale at the parking lot median to capture storm water. The Project aims to decrease impermeable surfaces and runoff, and enhance opportunities for stormwater infiltration management. The Project includes perimeter landscaping utilizing California native plants to create habitat areas for wildlife and birds. The Project is located at Lynwood Park adjacent to the Lynwood Youth Center and Lynwood Middle School. To take advantage of this location, this project aims to provide an integrative learning tool for children and teens to learn more about habitat restoration, water conservation, erosion-control and stormwater management. The Project also includes installation of an underground stormwater infiltration system to reduce the quantity of stormwater runoff leaving the site.

5. Source(s) of Funding: Funding for this Project has been funded in full or in part through and Agreement with Rivers and Mountains Conservancy (RMC) pursuant to the State of California Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1) and other funds.
6. Questions regarding the RFP contact the following City staff:

Ms. Lorry Hempe, Public Works Special Projects Manager
City of Lynwood
Telephone (310) 603-0220, ext 500
E-Mail: lhemp@lynwood.ca.us

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7. Delivery of Proposals: Deliver five (5) hard-copies of the proposals to the following address prior to the deadline.

For Proposal Deliver To:

Maria Quinonez, City Clerk

RFP- Lynwood Park Infiltration, Restoration and Water Quality Improvement Project

City of Lynwood

11330 Bullis Road

Lynwood, CA 90262

8. Submit an electronic copy of the proposal by email to lhempe@lynwood.ca.us within 24 hours of the Proposal Deadline.
9. Proposals Due Date: **Monday, April 23, 2018 5:00 pm, PST.**

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I. INTRODUCTION

In 2017, the City of Lynwood, California (City) was awarded a grant by the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) for the Lynwood Park Infiltration, Restoration, and Water Quality Improvement Project (Project) in the amount of \$1,692,575. The source of the RMC funding is from the State of California Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1).

II. PROJECT DESCRIPTION

The Project site is located at the south east corner of Birch Avenue and Spruce Street in Lynwood, CA.

The purpose of this RFP is to seek proposals from qualified and experienced architects and engineering firms to prepare construction plans and specifications, engineering estimates and construction support services.

The Project involves the replacement of asphalt at the Lynwood Park parking lot with permeable pavers, preparation of space for planting of native plants, shrubs, and establishment of bio-swale at the parking lot median to capture storm water. The Project aims to decrease impermeable surfaces and runoff, and enhance opportunities for stormwater infiltration management. The Project includes perimeter landscaping utilizing California native plants to create habitat areas for wildlife and birds. The Project is located at Lynwood Park adjacent to the Lynwood Youth Center and Lynwood Middle School. To take advantage of this location, this project aims to provide an integrative learning tool for children and teens to learn more about habitat restoration, water conservation, erosion-control and stormwater management. The Project also includes installation of an underground stormwater infiltration system to reduce the quantity of stormwater runoff leaving the site.

Funding for this Project has been funded in full or in part through and Agreement with Rivers and Mountains Conservancy (RMC) pursuant to the State of California Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1). The contents of this document does not necessarily reflect the views and polies of the RMC, nor does mention of trade names or commercial products constitute endorsement or recommendation of use.

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III. SCOPE OF SERVICES

The following scope of services as well as the entire RFP and San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) Grant Agreement will become part of the Agreement.

- A. The Consultant shall provide civil engineering and architecture services as required to complete the design of the Project and meet the RMC Grant Agreement. This includes landscape and irrigation system design including potable and future connection for recycled water systems, lighting design, storm water retention, ADA compliance improvement and drainage improvements.
- B. The Consultant shall create conceptual design, schematic design, preliminary cost estimates, construction schedules, final design, final cost estimates, construction schedules including the required engineered drawings and specifications for the public bid of the Project.
- C. Consultant shall incorporate in the plans and specifications components required by the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) Grant Agreement.
- D. Consultant shall participate in meetings with stakeholders partners in planning, development and monitoring.
- E. Consultant shall participate in pre-bid conferences and construction meetings.
- F. Consultant shall obtain plan approvals from appropriate agencies including County Fire Department, City of Lynwood, Rivers, and Mountains Conservancy, etc. to ensure selected contractor can pull permits for construction.
- G. Consultant shall provide as-built plans following construction.
- H. The Consultant shall provide construction support services during construction.

IV. SB 854

SB 854 (Stat. 2014, chapter 28) made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects. These new requirements apply to all public works that are subject to the prevailing wage requirements of the Labor Code, without regard to funding source. The City may only award public works projects to contractors and subcontractors that comply with the new Public Works Contractor Registration Law (SB 854). Contractors doing public

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works must register with the Department of Industrial Relations and meet the requirements before bidding on public works contracts in California.

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

V. SERVICES BY THE CITY

The Public Works Department will oversee and monitor the Consultant’s agreement for this Project.

Public Works Department will monitor the overall progress of Project and will advise the Consultant as to the policies and procedures of the City.

The City in consultation with the Consultant will secure the CCO approvals, process and make progress payments to the construction contractor, and prepare other administrative documents that may be required.

VI. TENTATIVE RFP SCHEDULE

Issue Date	March 21, 2018
Cut-off Date for Questions	April 12, 2018
Deadline to Submit Proposals	April 23, 2018, at 5pm
Proposals Evaluation	April 24-April 27, 2018
Interview of Short-Listed Candidates (if necessary)	May 2, 2018 at 10am
Award of Contract	May 15, 2018

VII. PROPOSAL SUBMITTAL REQUIREMENTS

- A. The proposal shall be prepared simply and economically, providing a straight forward, concise description of the firm’s proposal to provide the services of this RFP.

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Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of the City's needs. An incomplete proposal may at the discretion of the City be considered non-responsive and may be subject to rejection.

B. Proposal Format and Content

The following information is to be submitted as part of the proposal. The proposal is to be organized as follows:

1. **Cover Letter**- A signature by a principal or officer having the authority to negotiate and contractually bind and extend the terms of the written proposals is required.
2. **Firm Organization, Credentials and Background**- Provide a brief profile of your firm, principals of the firm, and any key sub-consultants, including type of legal entity (i.e. corporation), date firm established, location of office that will perform the work and basic services provided by the firm.
 - 1) Provide a general description of the firm's financial condition and identify any conditions (e.g. bankruptcy, pending litigation, planned office closures, impending merger, etc) that may impede the respondent to provide services.
3. **Approach to the Project** - Describe your approach to this project and any special ideas, techniques or suggestions that you think might make the project proceed smoothly.
4. **Project Experience**- Provide project profiles for at least three (3) projects similar to this Project scale and scope.
 - Brief summary of project: project name, location, year completed, size, project budget
 - Client contact name, title and phone number
 - Photographs or illustrations of completed project
 - Name of firm's project manager
 - Was the project completed within the proposed project schedule and budget?

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5. **Timeline-** Time is of the essence due to the deadline to complete this Project according to the RMC Grant Agreement. Submit your estimated time to complete the plans and specifications.
6. **Qualifications of Proposed Personnel-** Provide evidence that the firm's personnel and team members have expertise and experience to carry out the scope of work.
- Identify the proposed key team members (and their respective firms as applicable), and provide their qualifications including individual experience with similar projects.
 - Identify project sub consultants by company name, address, contact person, telephone number and project function, if applicable. The list should include a summary of the roles and responsibilities of each sub-consultant.
7. **References-** The Consultant shall supply a minimum of 3 references from agencies with projects of similar nature. Each reference shall contain:
- Client name and updated contact information (email and phone)
 - Project Name
 - Role of key project team members

8. **Agreement to City Contract Terms and Ability to Obtain Insurance –**

Affirm your firm's ability to execute the City's Professional Services Agreement (Appendix B) for the Project. Identify any conditions or terms of the Agreement with which the firm does not agree, including terms which the firm wishes to negotiate. Provide any proposed substitute language.

Provide specific assurances regarding the firm's ability to secure insurance that meets the City's requirements.

9. **Legal Issues –** Provide details of any past or pending litigation, or claims file, against your firm, principals of the firm, or each of your key consultants, related to services performed for public agencies, or in actions that may affect its performance under a contract with the City.

Provide a detailed litigation history (including open or pending matters) for the last five years. The history should include the nature of action, the amount

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of claim, the resolution, etc. In each case, provide the total amount awarded in favor or against the parties involved.

Provide the same information as above on any claims settled without litigation.

By providing the information requested above, all parties involved in the submitted proposal for services hereby grant permission for the City to take whatever actions they may deem necessary to substantiate and verify the information provided. Failure to provide the information requested may result in disqualification.

10. Disclosures- Provide detailed information on whether your firm or any principal of the firm has been, or currently is, the subject of any investigation by the County, State and/or Federal agencies within the past five years. If so, identify the agency, contact person, the nature of the investigation, and any determination over the outcome of said investigation. Failure to provide the information may result in disqualification.

11. Additional Statements- Consultant shall add the following written statements in their Proposal:

- Consultant shall adhere to all federal laws, state, and local laws and regulations.
- Consultant shall allow authorized federal, state, county, and the City's official's access to place of work, books, documents, papers, fiscal, payroll materials, and other relevant contract records pertinent to the Project. All relevant records shall be retained for at least three years.
- Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
- Consultant shall comply with the California Labor Code. Pursuant to said regulations entitled: Federal Labor Standards provisions; Federal Prevailing Wage Decision; and State of California Prevailing Wage Rates, respectively.

12. Cost Proposal: Provide a not to exceed and all-inclusive cost proposal for the Project. List all hourly rates for additional contract work as may be necessary.

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VIII. PROPOSAL DUE DATE

PROPOSAL DUE DATE

Monday, April 23, 2018 at 5:00 pm, PST

Delivery of Proposals: Deliver five (5) hard-copies proposals by the deadline.

For Proposal Deliver To:
Maria Quinonez, City Clerk
City of Lynwood
11330 Bullis Road
Lynwood, CA 90262

Write on the envelope the following:

RFP- Lynwood Park Infiltration, Restoration
and Water Quality Improvement Project (CIP # 4011.68.037)

Proposals will be accepted on or before the date and time indicated above.

Email a pdf copy of the proposal within 24 hours of the submittal deadline.

IX. SELECTION PROCESS

This RFP provides the information necessary to prepare and submit a proposal for consideration and ranking by the City. The City reserve the right to investigate and rely upon information from other available sources in addition to any documents of information submitted by the firm responding to this RFP.

Staff and/or consultant will evaluate and rank the submitted proposals (and all other available information) in the order in which they provide the "best value" to the City.

The City may, in its discretion, select a short list of top ranked respondents to interview for this Project, interview all respondents or directly negotiate with the preferred respondent. The City has tentatively scheduled **Wednesday, May 2, 2018 at 10:00 am for finalist interviews** if needed. If selected as one of the finalist in the selection process, the City reserves the right to request financial information from the firm. Any financial information requested will be held in confidence and used only in evaluating the financial strength of the firm and ability to perform all services requested. Representative from the awarding agency may be involved in the selection process.

City staff will meet with the recommended firm and negotiate the final form of the contract. If good faith negotiations with the selected firm are unsuccessful, the City will terminate such negotiations, and undertake new negotiations with another finalist, or

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finalists. The City reserves the right to reject any or all proposal at its sole discretion. The authorization for contract award for this Project will be upon approval of the Lynwood City Council.

X. ADDENDA

It shall be the responsibility of the Respondent to check the City's website to determine if any addendum has been posted to the website prior to the proposal opening date. The City's website address is www.lynwood.ca.us Click on "City Services", and then select "Bids and RFPs".

XI. GENERAL SELECTION CRITERIA

Selection of the most qualified firms will be based on the submitted proposal, interviews (if conducted), and other available sources of information. Staff or consultant will make its recommendation to the City Manager and to the City Council. Proposals will be evaluated based upon the criteria listed below:

- Completeness of Proposal
- Qualification and Technical Capabilities
- Experience and Projects Completed
- Timing to complete the Scope of Work (time is of the essence)
- Cost Proposal
- References

XII. GENERAL INFORMATION

City's Reservation of Rights: The City may evaluate the proposals based on the anticipated completion of all or any portion of the Project. The City reserves the right to divide the Project into multiple parts, to reject any and all proposals and re-solicit for new proposals, waive irregularities or minor errors in a proposal, or reject any and all proposals and temporarily or permanently abandon the Project. The City further reserves the right to negotiate different prices, rates and terms than those offered by any respondent. City makes no representations, written or oral; that it will enter into any form of agreement with any respondent to the RFP for any project and no such representations is intended or should be constructed by the issuance of this RFP.

Acceptance of Evaluation Methodology: By submitting its proposal in response to this RFP, respondent accepts the City's quality based criteria and evaluation process, and acknowledges and accepts that determination will require subjective judgments by the City.

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No Reimbursement for Costs: Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFP process shall be at the sole risk and responsibility of the respondent.

Waiver of Claims: Each respondent, in submitting a proposal, is deemed to have waived any claims for damages by reason of the selection of another proposal and/or the rejection of its proposal.

Exceptions to RFP: Respondents are required to clearly delineate in their proposal any exceptions to the requirements in this RFP.

Conflicts of Interest/Gifts: Respondents shall disclose any financial, business or other relationship with the City or any member of the City staff and shall list all current clients who may have a financial interest in the outcome of the project. Additionally, by submitting a proposal, Respondent warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the Respondent, to any officer or employee of the City with a view toward securing the contract or securing favorable treatment with respect to any determination concerning the performance of the contract. For breach or violation of this warranty, the City shall have the right to terminate the contract, wither in whole or in part. The rights and remedies of the City provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

The Respondent further certifies that no relationship exists between itself and the City or another person or organization that interferes with fair completion or constitutes a conflict of interest with respect to a contract with the City. Prior to the award of any contract, the potential Consultant may be required to certify in writing to the City that no relationship exists between the Respondent and any City employee, officer, official or agent that interferes with fair competition or is a conflict of interest with respect to a contract with the City.

Ethics in Public Contracting: Each Respondent, by submitting a proposal, certifies that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act by submitting a proposal, the Respondent certifies that its proposal was made without fraud; that it has not offered or received any kickbacks or inducements from any other Respondents in connection with the request for proposal; and that it has not conferred on any public employee, public member or public official having responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money services, or anything of more than nominal value.

No More than One Proposal: More than one proposal from an individual, firm, partnerships, corporation or association under the same or different names may be rejected. Reasonable grounds for believing that a Respondent has interest in more than one proposal for the work solicited may result in rejection of all proposals in which the Respondent is believed to have interest.

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Legal Responsibilities: All proposals must be submitted, filed, made, and executed in accordance with State of California and Federal laws relating to proposals for contracts of this nature whether the same or expressly referred to herein or not. By submitting a proposal, each Respondent certifies that it will comply with all Federal laws and requirements, including but not limited to Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection and other laws and regulations applicable to contracts utilizing Federal funds.

Business and Professional Licenses and Permits: Possession of a City Business License is not required to submit a proposal in response to this RFP. However, the successful Respondent shall be required to possess, at his/her expense, a valid and current City Business License, prior to commencing work. For additional information, contact the City Business Division at (310)603-0220.

Professional License: The successful Respondent is to be licensed in accordance with the California Business and Professions Code and is to possess current professional registration and be licensed to perform work in the State of California. The Respondent shall further be required to obtain and maintain at his/her own expense, any and all permits, licenses and certifications, used by any federal, state or local governmental agency, pertaining to, and necessary for providing the services required in this RFP.

No Assignment: No assignment by the successful Respondent of the contract or any part hereof, or of funds to be received thereunder, will be binding upon the City unless such assignment had prior written approval and consent of the City. In the event the City gives such consent, the terms and conditions of the agreement shall apply to, and bind the party or parties to whom such work is assigned, sublet or transferred.

XIII. QUESTIONS REGARDING THIS RFP:

All questions pertaining to this RFP must be provided in writing by email and received no later than Thursday, April 12, 2018 to:

Lorry Hempe, Public Works Special Projects Manager
lhemp@lynwood.ca.us

APPENDIX A

Site Map



APPENDIX B

City of Lynwood Professional Services Agreement

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**CITY OF LYNWOOD, CALIFORNIA
PROFESSIONAL SERVICES
AGREEMENT**

This agreement ("Agreement") is made as of _____, by and between the City of Lynwood, a California municipal corporation ("City"), and _____ Co. a _____ ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, City desires to utilize the services of Consultant as an independent contractor to provide landscape architectural and engineering services to City as set forth in the attached Exhibit A, for the design of the Lynwood Park Infiltration, Restoration and Water Quality Improvement Project (CIP # 4011.68.037) and,

WHEREAS, Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise its principals and employees.

NOW, THEREFORE, in consideration of performance by the Parties of the covenants and conditions herein contained, the Parties hereto agree as follows:

1. Consultant's Services.

A. Scope of Services. The nature and scope of the specific services to be performed by the Consultant are as described in **Exhibit A-1 to Exhibit A-2**.

B. Time of Performance. Consultant shall develop a Work Plan jointly with the City upon receipt of the Notice to Proceed. The Work Plan shall set the Performance Schedule for the design of the Project, adjusted for actual start dates.

2. Term of Agreement. This Agreement shall be for a term of twelve (12) months, commencing on the issuance of the Notice to Proceed as issued by the Director of Public Works/City" Engineer, (the "Commencement Date") and terminating twelve (12) months thereafter, (the "Termination Date"), unless sooner terminated pursuant to the provisions of this Agreement. On or before thirty (30) days prior to the Termination Date Consultant and City shall meet to discuss this Agreement and its possible extension and or modification. In the event Parties do not enter into a new agreement prior to the Termination Date, this Agreement shall continue on a month-to-month basis under the same terms for a period not to exceed six (6) months following the Termination Date. The month-to-month extension shall not increase the not-to-exceed amount under Section 3, Compensation and Payment.

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The City Manager may approve additional fees on a time and materials basis. If the Parties execute no new agreement by the end of the six-month period following the Termination Date, this Agreement shall terminate at the end of such six-month period.

1. Compensation and Payments

A. Compensation. City agrees to compensate Consultant for services rendered in an amount not to exceed _____ (\$_____). All services and deliverables within the scope of work as defined in the **Exhibit A-1 and Exhibit A-2** shall be compensated on the following basis:

- a. Reimbursable Expenses incurred by the Consultant, not to exceed _____ (\$_____).
- b. The Consultant shall be compensated for additional services beyond the scope of services specified in **Exhibit A-1 and Exhibit A-2**, which are requested and approved by the City, based on the hourly rates specified in **Exhibit A-3** (Consultant Hourly Rates). The Consultant shall be compensated for any additional reimbursable expenses at their actual cost.

B. Payments. The Consultant shall submit to the City for approval monthly applications for payment for basic and additional services, and reimbursable expenses, if any, with reasonable supporting detail. Payments for basic services shall not exceed _____ (\$_____) per month. Payment shall be made only after submission of proper monthly invoices in the form and manner specified by City. Each invoice shall include a breakdown of all monthly services performed. City shall endeavor to pay invoices bearing correct and authorized charges within thirty (30) days of the date received; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. City shall not be responsible to Consultant for any additional charges, interest or penalties due to a failure to pay within such period.

C. Additional Services and Out of Pocket Expenses. If at the request of the City, Consultant is required to provide additional services or incur out of pocket expenses beyond the expenses associated with performance of this Agreement, Consultant shall be entitled to compensation for such services on a time and material basis, and or reimbursement of such expenses, if approved in advance, in writing, by the Director of Public Works/City Engineer.

4. **General Terms and Conditions**. The General Terms and Conditions set forth Exhibit B are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other

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exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both Parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

City

City of Lynwood
11330 Bullis Road
Lynwood, CA 90262
Attn: Director of Public Works/ City Engineer

Phone: 310-603-0220

Consultant

Attn: _____

Phone: _____

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A-1 City of Lynwood Request for Proposals- REQUEST FOR PROPOSAL FOR LANDSCAPE ARCHITECT AND ENGINEERING SERVICES FOR Lynwood Park Infiltration, Restoration and Water Quality Improvement Project (CIP # 4011.68.037)

(_____) (____) pages)

Exhibit A-2 _____ Proposal from _____ (_____) Pages)

Exhibit A-3 _____ Fee Proposal (____) (____) page)

Exhibit B- General Terms and Conditions (Seven (7) pages).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written below.

CITY OF LYNWOOD, CALIFORNIA

By: _____
José Luis Solache
Mayor

Date

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ATTEST:

By: _____
Maria Quinonez
City Clerk

_____ Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

_____ Date

CONSULTANT

By: _____

_____ Date

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EXHIBIT A-1

SCOPE OF SERVICES

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EXHIBIT A-2

Proposal from _____

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EXHIBIT A-3

Hourly Rates

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EXHIBIT B

GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. In the event that City is audited by any Federal or State City regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

2. Standard of Performance.

A. Consultant shall perform all work to the highest professional standards normally practiced by recognized consulting companies in performing services of a similar nature. The City Manager or his/her designee may from time to time assign additional or different tasks or services to Consultant, provided such tasks are within the scope of services described in **Exhibit A-1 and Exhibit A-2**. However, no additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A-1 and**

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Exhibit A-2, or those so assigned in writing to Consultant by the City Manager or his/her designee.

B. The City Manager or his or her designee, shall, until further notice to Consultant, administer this Agreement and provide for immediate supervision of Consultant with respect to the services to be provided hereunder.

3. Indemnification.

A. Consultant is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of Consultant to perform said services and duties.

B. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), or damage to or destruction to third-party property, to the extent caused by the Consultant's negligent or willful acts or omissions of its agents, officers, directors, subcontractors, subconsultants or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required in this Section, Consultant agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any

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insurance coverages which may have been required under this Agreement or any additional insured endorsements which may extend to City.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnitees pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(i) Commercial General Liability Insurance using Insurance Services Office Commercial General Liability form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be \$1,000,000 per occurrence for all covered losses and \$2,000,000 general aggregate.

(ii) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be 1,000,000 per accident, combined single limit. If consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in the preceding subsection. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

(iii) Workers' Compensation insurance on a state approved policy form providing statutory benefits as required by law with employer's liability limits \$1,000,000 per occurrence and in the aggregate.

(iv) Professional Liability or Errors and Omissions Insurance as appropriate to the profession, written on policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be \$1,000,000 per occurrence and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

B. City, its officers, officials, employees, State of California, RMC and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

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C. All insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California with a Best's rating of no less than A:VII.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, or reduced (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to City via certified mail, return receipt requested, addressed to "Risk Manager," City of Lynwood, 11330 Bullis Road, Lynwood, California, 90262. Consultant agrees that it will not cancel or reduce said insurance coverage.

E. Consultant shall submit to City (i) insurance certificates indicating compliance with the worker's compensation insurance requirements above, and (ii) insurance policy endorsements indicating compliance with all other insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. The Consultant's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant and the cost of such insurance may be deducted, at the option of City, from payments due Consultant.

5. Confidentiality.

Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

6. Ownership of Work Product.

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All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Such material shall not be subject to copyright application by Consultant.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Consultant. Consultant's covenant under this section shall survive the termination of this Agreement.

8. Termination. City may terminate this Agreement with or without cause upon thirty (30) days' written notice to Consultant. The effective date of termination shall be upon the date specified in the notice of termination. Consultant agrees that in the event of such termination, City obligation to pay Consultant shall be limited to payment only for those services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written notice of termination, Consultant shall discontinue performing services, preserve the product of the services and turn over to City the product of the services in accordance with written instruction of City.

9. Personnel.

Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing services on City's premises.

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10. Financial Condition.

Prior to entering into this Agreement, Consultant has submitted documentation reasonably acceptable to the City Manager, establishing that it is financially solvent, such that it can reasonably be expected to perform the services required by this Agreement. Within thirty (30) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, Consultant shall submit such financial information as may be appropriate to establish to the satisfaction of the City Manager that Consultant is in at least as sound a financial position as was the case prior to entering into this Agreement. Financial information submitted to the City Manager shall be returned to Consultant after review and shall not be retained by City.

11. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

12. Assignment.

Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of City, and any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

13. Performance Evaluation.

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For any Agreement in effect for twelve months or longer, a written annual administrative performance evaluation shall be required within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

14. Compliance with Laws.

Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times comply with such laws, ordinances, codes and regulations. Without limiting the generality of the foregoing, if Consultant is an out-of-state corporation or LLC, it must be qualified or registered to do business in the state of California pursuant to sections 2105 and 17451 of California Corporations Code. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

15. Licenses.

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

16. Non-Waiver of Terms, Rights and Remedies.

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

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17. Attorney's Fees.

In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and consultants.

18. Notices.

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant's regular business hours or by facsimile before or during Consultant's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this section.

19. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

20. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

21. Severability.

If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

22. Entire Agreement.

This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the appropriate officer of

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the City as set forth in subsection 6-3.1 et seq. of the Lynwood Municipal Code and attested by the City Clerk.

23. Authority.

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.