

**Contract #3302  
Community Equity Analysis**



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

**THIS CONTRACT** ("Contract") is entered into by the City of Lynnwood Washington, (the "City"), and BDS Planning & Urban Design (the "Consultant"), whose address is 1932 1st Avenue, Suite 500, Seattle, WA 98101. The City is undertaking certain activities related to a Community Equity Survey and, the City desires to engage the Consultant 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 Consultant 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, and the following:

- Scope of Work ..... Exhibit A
- Price Attachment ..... Exhibit B
- Certificate(s) of Insurance and Policy Endorsement.....Exhibit C
- Other Exhibits and attachments (if applicable)

Request for Proposal (if applicable - as modified by any addenda)

Consultant's Proposal (if applicable)

**II. CONTRACT TERM**

This Contract shall be effective when countersigned by The City and shall expire 1 year(s) after the date of the City's signature, unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

**III. CONTRACT AMOUNT**

The City shall reimburse the Consultant upon Acceptance of the Work specified in this Contract in an amount not to exceed Forty Thousand Dollars (\$40,000), payable as set forth in Exhibit B.

IV. ACKNOWLEDGEMENT AND AUTHORITY

The parties acknowledge that they have had the opportunity to review this Contract. Therefore, 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.

**BDS PLANNING & URBAN DESIGN**

**CITY OF LYNNWOOD**

DocuSigned by:  
*Brian Scott*  
188294139104468...  
\_\_\_\_\_  
Brian Douglas Scott  
Principal  
Date Accepted: 12/23/2020

DocuSigned by:  
*Evan Chinn*  
ED88ACE24BE84DD...  
\_\_\_\_\_  
Evan Chinn  
Human Resources Director  
Date Accepted: 12/28/2020

## 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 Consultant 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.

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

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

### **2.2      Warranty**

Consultant warrants that the Work shall in all material respects conform to the requirements of this Contract. Consultant 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 Consultant shall furnish invoices to the project manager identified in nocites section of this contract. All invoices shall contain the complete description of the products, services, phases or milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

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

If the Consultant 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 Consultant 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 Consultant receives from the City.

### **2.4      Pricing**

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

### **2.5      Contract Amendment**

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

## 2.6 Changed Requirements

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

## 2.7 Taxes, Licenses, and Certificate Requirements

If, for any reason, the Consultant'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 Consultant shall notify the City immediately of such condition in writing. The Consultant and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

## 2.8 Notices

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

<b>THE CITY</b>	<b>CONSULTANT</b>
Project Manager	Project Manager
Evan Chinn	Ishmael Nuñez
19100 44 <sup>th</sup> Ave W	1932 1 <sup>st</sup> Ave – Suite 500
Lynnwood, WA 98036	Seattle, WA 98101
425-670-5086	206-971-6030
echinn@lynnwoodwa.gov	ishmael@bdsplanning.com

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

This Contract is a covered transaction for purposes of the Code of Federal Regulations and the Consultant is required to verify that none of the Consultant, its principals, or affiliates, are excluded or disqualified from receiving contract award by the Federal Government. The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant**

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 Consultant relationship shall be created by this Contract. The Consultant shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Consultant and its employees. The Consultant 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 Consultant 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 Consultant. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee of the Consultant or its Subcontractors, and the Consultant, 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 Consultant 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 Consultant.

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 Consultant 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 Consultant 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 Consultant'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 Consultant from its insurance obligations hereunder.

### 3.4 Insurance Requirements

Upon execution of this Contract, the Consultant, 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 Consultant 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 Consultant 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 Consultant under this Contract. The Consultant 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 Consultant 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 Consultant 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 Consultant'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 Consultant's liability to the City and shall be the sole responsibility of the Consultant
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 Consultant 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 Consultant 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 Consultant, shall be subject to all of the requirements stated herein.**

D. Work Site Safety

The Consultant shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Consultant shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Consultant 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 Consultant 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 Consultant shall not employ any Person or agent having any conflict of interest. In the event that the Consultant 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 Consultant take immediate action to eliminate the conflict.
- B. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Consultant represents that:
  - 1. No Persons except as designated by Consultant 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 Consultant or any of its officers, agents, employees or representatives, to any official, member or employee of the City or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
  - 3. Any Person having an existing contract with the City or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the City by offering any valuable consideration, thing or promise, in any form to any City official or employee shall have his or her current contracts with the City canceled and shall not be able to bid on any other City contracts for a period of two (2) years.
- C. Disclosure of Current and Former City Employees - To avoid any actual or potential conflict of interest or unethical conduct:
  - 1. City employees or former City employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Consultant, while employed by the City or within one (1) year after leaving City employment if he/she participated in determining the Work to be done or processes to be followed while a City employee.
  - 2. Consultant shall identify at the time of offer current or former City employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former City employees involved in this Contract may result in termination of this Contract.
  - 3. After Contract award, the Consultant is responsible for notifying the City's Project Manager of current or former City employees who may become involved in the Contract any time during the term of the Contract.

## **SECTION 5 RECORDS AND AUDITS**

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

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

The Consultant and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Consultant 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 Consultant 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 Consultant of the date on which the audit shall begin.

### **5.2 Audit Exception**

The Consultant 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 Consultant, 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 Consultant 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. Consultants 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 Consultant shall provide one copy of the audit report to each City division providing federal awards to the Consultant no later than nine (9) months subsequent to the end of the Consultant'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 Consultant 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 Consultant 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 Consultant of the request and allow the Consultant ten (10) business days to take whatever action it deems necessary to protect its interests. If the Consultant 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 Consultant for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Consultant 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 Consultant 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 Consultant 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 Consultant shall also place its endorsement on all Consultant-furnished Subject Data. All such identification details shall be subject to approval by the City prior to printing.

The Consultant 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. Consultants 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 Consultant may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Consultant 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 Consultant with respect to confidential information which the Consultant can establish that: a) was in the possession of, or was rightfully known by the Consultant 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 Consultant 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 Consultant without the participation of individuals who have had access to the City's or the third party's confidential information. If the Consultant is required by law to disclose confidential information the Consultant shall notify the City of such requirement prior to disclosure.

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

### **7.1 Claims and Appeals**

The Consultant 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 Consultant 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 Consultant shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Consultant 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 Consultant disagrees with the determination of the Buyer and Project Manager, the Consultant 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 Consultant 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 Consultant 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 Snohomish County 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 Consultant 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 Consultant does not perform the Work or the Consultant fails to perform in the manner called for in the Contract, or if the Consultant 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 Consultant by certified or registered first class mail in accordance with Section 2.10. The Consultant 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 Consultant 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 Consultant is in default and the effective date of termination.
3.    The Consultant 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 Consultant 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 Consultant, 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 Consultant 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.

### **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 Consultant 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 Consultant 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 HIPAA – Protecting Patient Privacy**

The Work under this Contract may require compliance with "The Health Insurance Portability and Accountability Act of 1996" (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/).

### **9.5 No Third Party Beneficiary**

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

### **9.6 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.

### **9.7 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.

## **EXHIBIT A – SCOPE OF WORK**

Requested by the City of Lynnwood's Team R.E.A.L. (Racial Equity Advancing Lynnwood), the Consultant will conduct a Community Equity Analysis based on the results of the below tasks to better understand the City's diverse population and determine if this faction of the community feels Lynnwood is a safe, welcoming and livable city. We will use the results to help guide policy, programs and service decisions. This data will also provide a baseline on the experiences of people who live, work, and visit Lynnwood.

The goal of this survey is to reach as many representatives of Lynnwood's diverse communities as possible. To this end, focused efforts will be targeted at specific groups to be identified by the consultants and the City's project managers. Statistical relevance (+/- 3%) is the aspirational goal, but achieving this will be tempered by the scope and budget of the contract.

### **1. Survey Questions Analysis**

We will work closely with the REAL team to analyze and adjust the City's current set of survey questions to best meet the intended goals of the Community Equity Analysis. The survey set should result in useful data that can be disaggregated by relevant race and social equity-related factors such as age, race, ethnic, and gender demographics, languages spoken, level of education, home ownership, and others.

### **2. Survey Implementation & Strategy**

In our experience, effective public involvement means strategizing multiple methods of community engagement. In doing so we can help to best capture the breadth of the communities' input while also deliberately reaching out to those who are typically not involved. Given the limitations of the pandemic, our multi-pronged approach takes into consideration that many communities – specifically those whom are low-income – experience “digital divide” barriers in accessing the internet/web-based surveys. Additionally, recent experience during the pandemic has also demonstrated that in many instances immigrant and refugee communities often continue to interact in person to an extent. As a result, for the City of Lynnwood we propose a survey implementation strategy that is safe and follows public health guidance, comprehensive, and responsive to these challenges. This may include the use of web and social media as well as mailers & postcards, phone and text follow-up, and partnering with local community groups with access to historically “hard-to-reach” populations.

The survey should be disseminated both via email and in hard copy form through a local partner. For community members whose dominant language is not English, an introduction and instructions on how to take the survey should be shared both in English and the appropriate primary language. This could be followed up by phone call and text reminders to take the survey, and additional follow up in person or virtually to take the survey with the respondent.

We can also take the survey for them online as they tell us their answers over the phone or virtually. They can speak to us in their native language (with the aid of interpreters) and we can interpret their answer in English and record it in the survey. More information on translation can be found below.

When done thoughtfully, online surveys can quite effectively gain a fairly accurate picture of community sentiments. Additionally, our high-touch and multi-pronged approach gives us the opportunity to better establish trust and relationships with the communities we are surveying. The development of an established connection supports re-engagement and the implementation of City long-term actions.

The City's Project Manager shall schedule with the Consultant, a strategy and outcome presentation to Lynnwood's City Council.

### **3. Translation**

The City of Lynnwood has a diverse community with a variety of languages spoken in households. With the assistance of the City, determine what the top 5 languages spoken in Lynnwood households are (<https://www.neighborhoodscout.com/wa/lynnwood/demographics>) A thorough analysis will aid in determining the top languages to use for the survey. BDS Planning would rely on the city's translators and interpreters to accommodate the survey. The translation service requires both initial translation and any back-translating as necessary. For the implementation, we see the potential hire of interpreters (different than translators) who might help with making phone calls or going out to do the survey collection. BDS Planning has ongoing relationships with translation and interpreter firms who would be able to take on this portion of the project

We recommend that the surveys are first written in English and in the most basic of terms as possible. This English version should then be translated professionally into the selected languages. In some instances, we can test the survey out with for example, Vietnamese and English readers, and refine the survey instrument from there.

When people respond in writing in their native language, we will hire for reverse translation so that we are accurately capturing their response. Whenever we are asked to conduct a survey by an external partner or government agency, we strongly encourage them to allow non-English responses and for the agency to pay for reverse translation in order to get the most responses as possible.

### **4. Survey Implementation**

Implement the survey to the Lynnwood community using the implementation strategy created.

### **5. Incentives**

\$15 gift card for participants. \$4500 for 300 respondents.

### **6. Data Analysis & Report**

Our team will consolidate and analyze all interview and survey data to generate themes and key findings. By asking for voluntary demographic information we will be able to disaggregate certain themes by race and other identities. We will also be able to compare demographic information.

With input from the community, the consultant team will finalize the themes in a written memo and provide recommendations for which populations should be targeted for follow-up focus group conversations.

### **7. Focus Groups & Follow-Ups**

Up to 4 focus groups will be conducted with populations whose survey data indicates that they do not experience Lynnwood as a safe, welcoming, and equitable city. The purpose of the focus group is to engage these sub-groups in a deeper dive and hold nuanced conversations to enrich the survey data and identify key opportunities for future engagement and outcomes.

### **8. Recommendations**

Our team will provide clear and feasible recommendations informed by the community equity survey and focus groups at various levels to address structural and institutional inequities within the City of Lynnwood's policies, practices, and governance structures.



**EXHIBIT B – COMPENSATION**

City of Lynnwood Community Equity Analysis	I. Nuñez	Valerie Tran	Support	Totals		Direct Expenses	Total Estimate	% of Total Budget			
				Hours	Fee						
				\$150	\$150				\$100		
<b>0 Project Management &amp; Coordination Meetings</b>	<b>24.0</b>	<b>\$3,600</b>	<b>1.0</b>	<b>\$150</b>	<b>0.0</b>	<b>\$0</b>	<b>25.0</b>	<b>\$3,750</b>	<b>\$225</b>	<b>\$3,975</b>	<b>10%</b>
0.1 Time, Task & Budget Management (12 mos.)	12.0	\$1,800	0.0	\$0	0.0	\$0	12.0	\$1,800	\$0	\$1,800	5%
0.2 Client Check-Ins	12.0	\$1,800	1.0	\$150	0.0	\$0	13.0	\$1,950	\$0	\$1,950	5%
0.4 Subconsultant mark-up	0.0	\$0	0.0	\$0	0.0	\$0	0.0	\$0	\$225	\$225	1%
<b>1 Survey</b>	<b>28.0</b>	<b>\$4,200</b>	<b>9.0</b>	<b>\$1,350</b>	<b>50.0</b>	<b>\$5,000</b>	<b>87.0</b>	<b>\$10,550</b>	<b>\$8,000</b>	<b>\$18,550</b>	<b>46%</b>
1.1 Survey Question Analysis	8.0	\$1,200	2.0	\$300	2.0	\$200	12.0	\$1,700	\$0	\$1,700	4%
1.2 Survey Implementation Strategy	8.0	\$1,200	3.0	\$450	8.0	\$800	19.0	\$2,450	\$0	\$2,450	6%
1.3 Contingency (Translation, Interpretation, Mailing, etc.)	2.0	\$300	1.0	\$150	4.0	\$400	7.0	\$850	\$3,500	\$4,350	11%
1.4 Survey Implementation	4.0	\$600	0.0	\$0	16.0	\$1,600	20.0	\$2,200	\$0	\$2,200	6%
1.5 Incentives (300 @ \$15)	2.0	\$300	1.0	\$150	4.0	\$400	7.0	\$850	\$4,500	\$5,350	13%
1.6 Data Analysis & Report	4.0	\$600	2.0	\$300	16.0	\$1,600	22.0	\$2,500	\$0	\$2,500	6%
<b>2 Focus Groups</b>	<b>32.0</b>	<b>\$4,800</b>	<b>2.0</b>	<b>\$300</b>	<b>64.0</b>	<b>\$6,400</b>	<b>98.0</b>	<b>\$11,500</b>	<b>\$0</b>	<b>\$11,500</b>	<b>29%</b>
2.1 Focus Group Planning	8.0	\$1,200	2.0	\$300	8.0	\$800	18.0	\$2,300	\$0	\$2,300	6%
2.2 Facilitation (4)	16.0	\$2,400	0.0	\$0	24.0	\$2,400	40.0	\$4,800	\$0	\$4,800	12%
2.3 Summaries	8.0	\$1,200	0.0	\$0	32.0	\$3,200	40.0	\$4,400	\$0	\$4,400	11%
<b>3 Recommendations &amp; Report</b>	<b>19.0</b>	<b>\$2,850</b>	<b>3.0</b>	<b>\$450</b>	<b>20.0</b>	<b>\$2,000</b>	<b>42.0</b>	<b>\$5,300</b>	<b>\$675</b>	<b>\$5,975</b>	<b>15%</b>
3.1 Recommendations	16.0	\$2,400	2.0	\$300	4.0	\$400	22.0	\$3,100	\$0	\$3,100	8%
3.2 Final Report	3.0	\$450	1.0	\$150	16.0	\$1,600	20.0	\$2,200	\$675	\$2,875	7%
<b>GRAND TOTAL</b>	<b>103.0</b>	<b>\$15,450</b>	<b>15.0</b>	<b>\$2,250</b>	<b>134.0</b>	<b>\$13,400</b>	<b>252.0</b>	<b>\$31,100</b>	<b>\$8,900</b>	<b>\$40,000</b>	<b>100%</b>

## **EXHIBIT C – CERTIFICATE OF INSURANCE AND POLICY ENDORSEMENT**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/23/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Hecht &amp; Hecht Insurance Agency, Inc.</b> 425 NE Hancock St 1st fl Portland, OR 97212	<b>CONTACT NAME:</b> Sam Peschka <b>PHONE (A/C, No, Ext):</b> (503) 542-1129 <b>FAX (A/C, No):</b> (503) 288-6374 <b>E-MAIL ADDRESS:</b> Samantha@hechtins.com												
<b>INSURER(S) AFFORDING COVERAGE</b>													
<b>INSURED</b>  <b>BDS Planning &amp; Urban Design, Inc.</b> 1932 1st Avenue Suite 500 Seattle, WA 98101	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><b>INSURER A :</b> Sentinel Insurance Company Ltd</td> <td style="text-align: right;"><b>11000</b></td> </tr> <tr> <td><b>INSURER B :</b> Lloyd's of London</td> <td style="text-align: right;"><b>00000</b></td> </tr> <tr> <td><b>INSURER C :</b></td> <td></td> </tr> <tr> <td><b>INSURER D :</b></td> <td></td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </table>	<b>INSURER A :</b> Sentinel Insurance Company Ltd	<b>11000</b>	<b>INSURER B :</b> Lloyd's of London	<b>00000</b>	<b>INSURER C :</b>		<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
<b>INSURER A :</b> Sentinel Insurance Company Ltd	<b>11000</b>												
<b>INSURER B :</b> Lloyd's of London	<b>00000</b>												
<b>INSURER C :</b>													
<b>INSURER D :</b>													
<b>INSURER E :</b>													
<b>INSURER F :</b>													

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: <b>Washington Stop Gap</b>	<b>X</b>		<b>52SBATN8263</b>	<b>4/29/2020</b>	<b>4/29/2021</b>	EACH OCCURRENCE	<b>\$ 2,000,000</b>
							DAMAGE TO RENTED PREMISES (Ea occurrence)	<b>\$ 2,000,000</b>
							MED EXP (Any one person)	<b>\$ 10,000</b>
							PERSONAL & ADV INJURY	<b>\$ 2,000,000</b>
							GENERAL AGGREGATE	<b>\$ 4,000,000</b>
							PRODUCTS - COMP/OP AGG	<b>\$ 4,000,000</b>
							<b>Employers Liab</b>	<b>\$ 1,000,000</b>
<b>A</b>	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	<b>X</b>		<b>52SBATN8263</b>	<b>4/29/2020</b>	<b>4/29/2021</b>	COMBINED SINGLE LIMIT (Ea accident)	<b>\$ 2,000,000</b>
							BODILY INJURY (Per person)	<b>\$</b>
							BODILY INJURY (Per accident)	<b>\$</b>
							PROPERTY DAMAGE (Per accident)	<b>\$</b>
								<b>\$</b>
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE	<b>\$</b>
							AGGREGATE	<b>\$</b>
								<b>\$</b>
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below <input type="checkbox"/> N / A						PER STATUTE    OTH-ER	<b>\$</b>
							E.L. EACH ACCIDENT	<b>\$</b>
							E.L. DISEASE - EA EMPLOYEE	<b>\$</b>
							E.L. DISEASE - POLICY LIMIT	<b>\$</b>
<b>B</b>	<b>Professional Liability</b>			<b>ANE14471320</b>	<b>4/21/2020</b>	<b>4/21/2021</b>	<b>Each Claim</b>	<b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Contract Number- 3302

**CERTIFICATE HOLDER****CANCELLATION**

City of Lynnwood 19100 44th Ave W Lynnwood, WA 98036	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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