



**City of Lakewood
480 S. Allison Parkway
Lakewood, CO 80226**

**REQUEST FOR QUALIFICATIONS NO. 6188
ZONING ORDINANCE AMENDMENT SERVICES**

ISSUE DATE: June 21, 2024

QUESTIONS DUE DATE & TIME July 5, 2024 – 5:00 p.m., MT

SUBMITTAL DUE DATE & TIME: **July 26, 2024 – 10:00 a.m., MT**

SUBMIT QUALIFICATIONS ELECTRONICALLY: Rocky Mountain E-Purchasing System (“RMEPS”) portal at <https://www.bidnetdirect.com/colorado>

Submittals must be received in the RMEPS submission portal on or before the Submittal due date and time. **Hardcopy submittals will not be accepted.** It is the Respondent’s sole responsibility to ensure all required documents are submitted through RMEPS by the submission deadline. RMEPS does not allow for uploading of documents after the submittal due date and time has closed.

The Submittal will be time-stamped by RMEPS upon receipt. After uploading Submittal documents, Respondents must click the SUBMIT button. The City of Lakewood will not accept uploads that are “saved” but not “submitted”. To verify that a Submittal has been submitted successfully, Respondents may contact BidNet Support or verify, via the Bid Management tab in the Respondent’s account, that the documents are not in “Draft” status. The City does not have access to or control of the Vendor side of RMEPS. Please contact RMEPS at 1-800-835-4603, Option 2, for technical assistance.

Please Note: Addenda may be issued for this RFQ and will be posted online at <https://www.bidnetdirect.com/colorado>. Respondents shall ensure all addenda issued are acknowledged and responses thereto submitted along with the required Submittal documents. Failure to submit such responses may result in disqualification of the respective Submittal.

Statements of Qualifications (as hereinafter defined) received after the above specified due date and time, or which are not prepared and filed in accordance with the terms and conditions of this Request for Qualifications (“RFQ”), may not be considered for evaluation.

The City reserves the right to waive any informalities or technicalities in Statements of Qualifications, if doing so is deemed to be in the best interest of the City.

The City of Lakewood cannot guarantee accuracy of information obtained from any source other than RMEPS. Respondents are required to use their own RMEPS account.

REQUEST FOR QUALIFICATIONS NO. 6188 ZONING ORDINANCE AMENDMENT SERVICES

I. INTRODUCTION

The City of Lakewood (the “City”) is seeking qualified persons or entities (“Respondents”) to submit a Statement of Qualifications (“SOQ”) for assistance in analyzing and updating the City’s Zoning Ordinance. The selected Contractor will collaborate with City staff to facilitate amendments to the existing zoning ordinance. The City desires to produce innovative, user-friendly zoning and development regulations that will:

- Implement the 2040 Comprehensive Plan;
- Address contemporary development and zoning needs;
- Be easily understood by staff, the public and the development community

Areas of key concern to be incorporated into the zoning ordinance include and are not limited to the following:

- Implementing changes identified as part of the concurrent Comprehensive Plan update process;
- Reduce the number and/or simplify residential zone districts and remove restrictions to increases in residential density;
- Increase housing opportunities in existing and future neighborhoods;
- Increase access to attainable housing;
- Improving equity among Lakewood residents;
- Removal, simplification, or reduction of parking minimums;
- Removal, simplification or reduction in the number of dimensional, bulk, and height, standards related to development on individual lots;
- Changes in the number of discretionary approvals requiring a public hearing;
- Providing graphics and illustrations to supplement, replace, and/or clarify written regulations;
- Updates to sustainability requirements in coordination with sustainability staff.

The Planning Commission will function as the citizen advisory committee for drafting the zoning ordinance amendments. The amended zoning ordinance will address topics related to procedures and appeals, zone districts and uses, dimensional, development, and design standards, parking, signs, the enhanced development menu and definitions.

II. SCOPE OF SERVICES

Please refer to Section IV of this RFQ for detailed scope information.

III. QUALIFICATION SUBMITTAL REQUIREMENTS

- A. Interested Respondents shall submit a completed Statement of Qualifications (“RFQ”) pursuant to Section III of this RFQ no later than **10:00 a.m., Friday July 26, 2024 via RMEPS at: <https://www.bidnetdirect.com/colorado>**. Submittals will not be accepted after the specified due date and time.
- B. Submittals shall provide the following information to include the following items:
1. Description of Approach: A brief written narrative of the Contractor’s approach to the project; maximum of two (2) pages. The narrative should describe the Contractor’s approach to similar projects completed.
 2. Team Expertise: The brief description of the general qualifications and expertise of the team assembled by a Contractor to complete the project, including evidence of specific experience creating municipal land use development regulations.
 3. Comparable Projects: A list of comparable projects undertaken by Contractor and/or team members.
 4. Sample of zoning ordinance related project(s) in progress or completed. Although not required, the City requests Contractors with experience writing codes provide photos from communities where codes were adopted, showing implementation results with projects.
- C. All questions pertaining to technical information about this RFQ shall be directed to Bianca Rhoades, Contract Administrator - Legal, at biarho@lakewood.org. Questions must be received via email no later than **5:00 p.m., MT on July 5, 2024**. One or more addenda may be issued, which will include all questions and the City’s responses, and will be posted on RMEPS at: <https://www.bidnetdirect.com/colorado>. Each Respondent is responsible to respond, with the Qualifications submitted to each addendum issued. Failure to address each addendum may result in disqualification of the submittal.

IV. EVALUATION AND AWARD FACTORS

The City will evaluate the proposals based on the criteria below.

Planning Department staff will review and evaluate proposals according to the selection criteria detailed below. The City will evaluate all submittals to determine which Contractors have the experience and qualifications best suited for this project. The City may request one or more consulting firms to submit a more detailed proposal and/or present their proposal(s) to City staff. Award of a contract, if any, will be to the firm deemed best qualified, in accordance with the selection criteria, to perform the services outlined in this RFQ and other services as deemed necessary by the City. Contractors responding to this RFQ must demonstrate the following:

1. Experience in writing or implementing municipal land development regulations.
2. Experience in preparing municipal zoning codes that regulate development and redevelopment in other communities.
3. Experience in building group consensus across diverse interest groups to support innovative regulatory standards.
4. Strong graphic skills.
5. Strong skills in written and oral communication.
6. Experience in identifying, evaluating, codifying, and explaining the essential qualities of community design and character.

Other Considerations

The City reserves the right to amend, withdraw, and/or cancel this RFQ. The City reserves the right, without qualification, to reject any or all responses to this RFQ at any time prior to entering into an agreement for professional services with the selected team. The City reserves the right to request or obtain additional information about any and all submittals.

INFORMATION TO RESPONDENT

I. QUALIFICATIONS

- A. No SOQ shall be accepted from, and no award shall be made to, any person or entity that is in arrears to the City: (i) upon debt or contract that is a defaulter, as surety or otherwise; (ii) upon any obligation to the City; or (iii) that is deemed irresponsible or unreliable by the City.
- B. If requested, each Respondent shall submit satisfactory evidence that it has a practical knowledge of the Project and the necessary financial resources to complete the Project.

II. SOQ SUBMITTAL

- A. Before submitting a SOQ, each Respondent shall read the Request for Qualifications, Scope of Services, sample contract and all other contract documents included herein and fully inform itself as to all existing conditions, uncertainties, requirements and limitations. The submission of a SOQ shall be considered conclusive evidence that the Respondent has fully complied with these requirements.
- B. Each SOQ shall be typed or legibly written in ink and include sums identifying the cost of each item to be included in the contract with all prices given in figures and also words where called for. The SOQ must cover all of the items of performance therein and no others unless instructions to the contrary are specifically stated in the Scope of Services.
- C. SOQs must be submitted electronically in pdf format as stated above. SOQs submitted by any other means will not be accepted.
- D. The completed forms shall be without any interlineations, alterations or erasures. SOQs shall not contain any recapitulation of the performance herein asked for.
- E. Each Respondent must sign its SOQ with its usual signature and shall give the Respondent's full business address on the form provided. SOQs by partnerships shall be signed with the partnership name by one of the members or by an authorized representative. SOQs by limited liability companies shall be signed by the LLC's manager or managing member, as applicable. SOQs by corporations shall be signed with the name of the corporation followed by the signature and designation of the President, Secretary or other person authorized to bind such corporation in the matter and shall have the corporate seal affixed.

III. LATE SOQs, MODIFICATION, OR WITHDRAWAL OF SOQs

- A. SOQs will not be accepted after the due date and time set forth in this RFQ.
- B. Any modifications to or withdrawal of a SOQ must be done via email prior to the exact time set for receipt of SOQs.

IV. SOQ INTERPRETATION

- A. No information derived from any maps, plans, specifications, profiles, drawings or any City representative will relieve Respondent from any risk or from fulfilling all terms of this RFQ or from fulfilling all of the terms of the Agreement. The accuracy of a Respondent's interpretation of the facts disclosed by any City representative is not guaranteed. Respondent shall not at any time make claim to any additional payments, considerations or accounting of any misunderstanding regarding the nature or amount of work to be performed.
- B. Should a Respondent find discrepancies in or omissions from any drawings, specifications or other contract documents, or should a Respondent be in doubt as to the true meaning thereof, such Respondent shall at once notify Bianca Rhoades, Contract Administrator - Legal at biarho@lakewood.org at least 48 hours prior to the time set for the opening of SOQs, excluding Saturdays, Sundays and holidays. If the point in question is not clearly and fully set forth, a written addendum or bulletin of instructions will be emailed to all Respondents. If the point in question is not clearly and fully set forth, a written addendum shall be published online at <https://www.bidnetdirect.com/colorado>.

V. AUTHORITY REQUIREMENTS

Respondent agrees to abide by all federal, state and local laws, rules and regulations in securing all necessary licenses and permits in connection with the SOQ. Such laws, rules and regulations shall apply to this RFQ throughout and will be deemed to be included in the Agreement the same as though herein written out in full.

VI. CHANGES CLAUSE

No change will be made to the requirements of this RFQ without the express written consent of the City. Any excess cost incurred by the Contractor, in the event an unauthorized change is made, will be at its expense and not chargeable to the City. Any change made without the consent of the City may result in cancellation of the Agreement.

VII. PAYMENT

City payment terms are Net 30 days, unless otherwise negotiated. Payment shall be processed upon the City's receipt of an itemized invoice. Each purchase order shall be invoiced separately.

VIII. TAX EXEMPT

The City, as a Colorado municipal corporation, is exempt from taxation and shall not be charged taxes on any materials, equipment or services used, purchased or consumed in fulfillment of the Agreement.

IX. CONFIDENTIAL AND PROPRIETARY INFORMATION

The City is a public entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, *et seq.* (the "Act"), and therefore, this RFQ and all SOQs are subject to public disclosure under the Act. In the event a Respondent desires any information provided as part of the SOQ process to be kept confidential, the Respondent must clearly mark all such information and provide a brief description as to why the information is, or should be, considered confidential or proprietary. Such identification by a Respondent is not determinative, and

the City shall make the final decision as to whether such identified information may be kept confidential under the Act. In no event shall entire SOQs be marked confidential.

X. CONTRACT INCLUSIONS AND EXCLUSIONS

- A. All Respondents are hereby placed on notice that Sections I through IV, and any addenda issued for, this RFQ will be incorporated by reference as contract documents with the Agreement and will be on file in the Office of the City Clerk. The successful Respondent (the "Contractor") shall not destroy these documents.
- B. A sample Agreement is included with this RFQ. By submitting a SOQ, Respondents expressly agree to the terms and conditions contained in the sample Agreement including, but not limited to, provisions regarding public documents, indemnification and insurance, unless the SOQ contains express, unambiguous and clearly marked exclusions to the sample Agreement. **Failure to clearly identify exceptions to the sample Agreement shall constitute acceptance of all provisions therein, and no negotiation regarding such provisions shall be allowed. Any such exclusions shall be considered in the City's evaluation of the SOQ and may result in a less-favorable rating of the SOQ.**

XI. EXPECTATIONS FOR PROFESSIONAL SERVICES; PERFORMANCE STANDARDS

The City expects knowledge and skill that meet the requirements of the Agreement, not work that is merely "not negligent." Consequently, the Contractor shall be liable and responsible for any and all design defects, as well as damages to persons or property, caused by or arising out of the actions, obligations or omissions of Contractor or its employees, agents, subcontractors or other persons acting under the Contractor's direction or control in performing or failing to perform the Services under the Agreement.

**STATEMENT OF QUALIFICATIONS
SUBMITTAL FORM**

RFQ No. 6188
RFQ DUE DATE & TIME: **July 26, 2024 - 10:00 a.m., MT**
SUBMIT RFQ ELECTRONICALLY: Rocky Mountain E-Purchasing System
("RMEPS") portal at
<https://www.bidnetdirect.com/colorado>

RESPONDENT NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

PHONE NUMBER: _____ EMAIL: _____

FEDERAL TAX ID NUMBER _____

Prompt Payment Discount Terms: ___% 10 calendar days ___% 20 calendar days
 ___% 30 calendar days ___% Other

<p>OPTIONAL INFORMATION</p> <p>Please select if applicable (<i>information provided is for data collection only and will not be used for evaluation purposes</i>):</p> <ul style="list-style-type: none"><input type="radio"/> CERTIFIED MINORITY-OWNED BUSINESS<input type="radio"/> CERTIFIED WOMEN-OWNED BUSINESS
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**STATEMENT OF RESPONDENT'S QUALIFICATIONS
RFQ No. 6188**

1. Respondent's Name _____

2. How many years has Respondent been engaged in this type of business? _____

3. List several companies and a person to contact with whom Respondent has contracts:

A. _____ B. _____

C. _____ D. _____

4. Are any lawsuits pending against Respondent at this time?

Yes ___ No ___ If yes, detail: _____

5. Have any charges been filed against you or your firm or the bidding entity with the Office of Contract Compliance, the Equal Opportunity Commission, the State of Colorado Civil Rights Commission, or any other similarly constituted entity charges by any state or local government with the enforcement of antidiscrimination legislation or regulations?

Yes ___ No ___ If yes, detail: _____

7. Respondent's contract exclusions, if any. **Please see Part II, Section XI., Item B., Contract Inclusions & Exclusions and Sample Agreement provided in this RFQ:**

7. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Lakewood in verification of the recitals comprising this Statement of Respondent's Qualifications and that the answers to the foregoing questions and all statements therein contained are true and correct.

**SIGNATURE PAGE
RFQ NO. 6188**

The undersigned Respondent hereby acknowledges that it has not entered into any agreement with any other Respondent or prospective Respondent or with any other person or entity relating to Respondent's SOQ or any other SOQ, nor any agreement or arrangement under which any person or entity is to refrain from responding to this RFQ, nor any agreement or arrangement for any act or omission in restraint of free competition among Respondents. Furthermore, Respondent has not disclosed to any person or entity the terms of the SOQ.

The following must be fully completed:

Dated at _____ this _____ day of _____, 2024.

SIGNATURE OF RESPONDENT:

If an individual By _____

 Doing business as _____

If a partnership By _____, Partner

If an LLC By _____

 TITTLE _____

If a corporation a _____ corporation
 (State)

By _____

TITTLE _____

SCOPE OF SERVICES

The finished product will be an amended Zoning and Ordinance, resulting in the complete repeal and replacement, entirely or in part, of the zoning code. The work shall focus on the City's main land development code including and not limited to Articles:

- 2 - Procedures and Appeals,
- 3 - Zone Districts,
- 4 - Uses and Supplemental Standards,
- 5 - Dimensional and Development Standards,
- 6 - Residential Building and Site Design Standards,
- 7 - Institutional, Mixed-Use, Commercial and Light Industrial Building and Site Design,
- 8 - Parking and Loading Standards,
- 9 - Sign Standards,
- 12 - Nonconformities,
- 13 - Enhanced Development Menu, and
- 14 – Definitions

Although the following sections are not part of the project, the Contractor will be asked to provide general feedback and identify issues on land use codes related to and affecting zoning policy including and not limited to: Lakewood Municipal Code short term rentals, vacant properties, school and park land fees, and various economic development programs.

The Scope of Services should include the items listed below. City staff will work with the selected Contractor to establish specific timelines, budget and deliverables for the project. Generally, the Contractor planner shall be responsible for writing the new zoning code, as well as providing guidance on best practices and trends, and checking assumptions.

1. Analyze current Zoning Ordinance. The Contractor will work closely with City staff to produce a diagnosis of the existing code.
2. Review the 2040 Comprehensive Plan. The Contractor will identify goals, recommendations, and implementation strategies, to ensure the new code is consistent with the 2040 Plan.
3. Evaluate Existing Zoning Districts. Lakewood contains many unique areas that will warrant context-sensitive regulations. Staff will work with the Contractor to identify these areas.
4. Draft the Document. The Contractor will prepare drafts of the zoning ordinance, including graphics for review by staff, culminating in a final version to be presented to and acted upon by the Planning Commission and City Council.
5. Integrate the New Code into User-Friendly Formats. The Contractor will work with City staff to make the new code interactive and accessible to the public.

Timeline and Payment

City staff will work with the selected consulting planning firm to determine the project timeline, milestones and budget. The project budget shall be a “Not to Exceed” amount. Funding for this project is included in the City’s budget for both 2024 and 2025. Based on current fund allocation, staff anticipates a significant portion of the project will occur in 2024.

SAMPLE AGREEMENT

CITY OF LAKEWOOD AGREEMENT FOR SERVICES – REQUEST FOR QUALIFICATIONS NO. 6188

THIS AGREEMENT FOR SERVICES – REQUEST FOR QUALIFICATIONS NO. 6188 (the “Agreement”) is made and entered into by and between the **CITY OF LAKEWOOD**, a Colorado home rule municipal corporation whose principal business address is 480 South Allison Parkway, Lakewood, Colorado 80226 (the “City”), and **CONTRACTOR NAME**, a [Colorado/Other State] [corporation] [limited liability company] [partnership] [individual/sole proprietor], authorized to conduct business in the state of Colorado, whose local business address is --- (“Contractor”), effective as of the latest date set forth in the signature blocks below (the “Effective Date”).

WHEREAS, pursuant to Request for Qualifications (“RFQ”) No. 6188 the City received SOQs at **10:00 a.m. on July 26, 2024, for Zoning Ordinance Amendment Services** and determined Contractor’s proposal to demonstrate the most appropriate combination of cost, responsiveness and responsibility (the “SOQ”);

WHEREAS, the City desires to retain the services of Contractor in accordance with RFQ No. 6188 and the SOQ; and

WHEREAS, Contractor desires to provide such services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is expressly acknowledged, the parties hereby agree as follows:

I. CONTRACT DOCUMENTS

- A. CONTRACT DOCUMENTS. The Contract Documents shall be this Agreement and RFQ No. 6188, together with the Request for Qualifications Response Form, General Provisions, Scope of Services, Statement of Respondent’s Qualifications, any Addenda, the SOQ and the Notice of Award, all incorporated herein by reference.
- B. ORDER OF PRECEDENCE. In the event of any conflict among the provisions of the Contract Documents, the order of precedence shall be as follows:
 - 1. This Agreement;
 - 2. Addenda to RFQ No. 6188 (if any);
 - 3. RFQ No. 6188
 - 4. Scope of Services (if any);
 - 5. General Provisions (if any);
 - 6. Notice of Award;
 - 7. SOQ;
 - 8. Other Contract Documents (if applicable).

II. SERVICES

- A. SCOPE OF SERVICES. The City agrees to retain Contractor to provide the services identified in the SOQ in the manner set forth in the Proposal and in accordance with the terms of RFQ No. 6188 and the other Contract Documents (collectively, the “Services”).

III. PERFORMANCE

A. REPRESENTATIONS; PROSECUTION OF SERVICES.

1. Contractor warrants and represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein.
2. Contractor shall use its best efforts, skill, judgment and abilities to perform all work on behalf of the City in a professional manner, free of material error.
3. Except as otherwise set forth Contractor shall, at its own expense, perform all tasks and provide all labor, materials, supplies, tools, machinery, utilities, equipment and any other items that may be necessary for the completion of the Services.

B. SUBCONTRACTS. Contractor hereby agrees that it will not engage subcontractors to perform any part of the Services, other than for the provision of goods, materials or supplies, without the express written consent of the City, which shall not be unreasonably withheld.

C. LICENSES AND PERMITS.

1. Contractor and each subcontractor shall, at no cost to the City, obtain all licenses and permits required for the Services, if any, including a City of Lakewood sales and use tax license.
2. Contractor shall be current on all legal obligations to the City and to any other governmental entity, including but not limited to, payment of taxes and fees, reporting, and all material contractual obligations.

D. TIME OF ESSENCE AND RATE OF PROGRESS. Contractor acknowledges and agrees that time is of the essence for this Agreement and that it is an essential term of this Agreement that Contractor maintain a rate of progress in the Services that will result in completion of the Services in accordance herewith. To that end, Contractor agrees to proceed with all due diligence to complete the Services in a timely manner in accordance with this Agreement, and further agrees that failure to complete any of the Services during the Term of this Agreement, or as may be more specifically set forth in the Contract Documents, shall be deemed a breach hereof.

E. MONITORING AND EVALUATION. The City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

F. SPECIFIC PERFORMANCE. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services in addition to any other remedy available under applicable law.

III. CONSIDERATION AND PAYMENT

- A. AMOUNT. In full consideration of Contractor's performance of the Services, the City shall compensate Contractor in accordance with an amount **not to exceed [Write in Words] dollars (\$0000.00)** (the "Compensation") during the Term hereof. Notwithstanding the foregoing, in the event the total cost of the Services provided is less than the Compensation amount herein set forth, the City shall compensate Contractor only for the cost of the Services provided.
- B. NO REIMBURSEMENT OF EXPENSES. In no event shall the City reimburse Contractor for out-of-pocket, travel, travel time, meal or any other expenses that are in addition to or in excess of the Compensation agreed to herein.
- C. PAYMENT. Unless otherwise set forth herein or as expressly stated in any attachment or exhibit hereto, the City shall make Compensation payments to Contractor within thirty (30) days after receipt and approval of invoices submitted by Contractor. Contractor shall submit invoices to the City not more frequently than monthly and shall identify therein the specific Services performed for which payment is requested. Payments will be made payable to Contractor's personal, trade or business name as first stated above. Any such trade or business name must be registered with the Office of the Colorado Secretary of State.
- D. APPROPRIATION. The City is not obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated or to make payments from any funds of the City other than funds appropriated for the payment of current expenditures. All payment obligations of the City under this Agreement are from year-to-year only and do not constitute a multiple-fiscal-year direct or indirect debt or other financial obligation of the City.
- E. TAX EXEMPT. The City, as a Colorado municipal corporation, is exempt from taxation and shall not be charged taxes on any materials, equipment or services used, purchased or consumed in fulfillment of the Services. Where necessary to comply with this provision, the City's Purchasing Division may issue to Contractor a tax exemption certificate.

IV. TERM AND TERMINATION

- A. TERM. The term of this Agreement shall commence on the Effective Date and shall expire on **DATE**, unless extended by the parties in writing, at which time all Services shall have been completed to the City's satisfaction.
- B. TERMINATION.
1. Termination by the City. The performance of the Services may be terminated at any time, in whole or in part, by the City for its convenience. Any such termination shall be effected by delivery to Contractor of a written notice specifying the extent to which performance of the Services is terminated and the date upon which termination becomes effective.
 2. Termination by Contractor – Breach/Default by City. Contractor may terminate this Agreement in the event of a material breach or default by the City; provided, however, that Contractor has first given the City written notice of the nature of the breach or default and the City shall have failed to cure within ten (10) business days after receipt of the notice. Pending resolution of any material breach or default by the City, Contractor may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement. In no event shall the City withhold payment in retaliation for Contractor's claim of breach or default.

3. Payment upon Termination. If this Agreement is terminated, Contractor shall be paid on the basis of the Services satisfactorily completed. The portion of the Services completed but not yet accepted by the City shall be determined by the City in the exercise of its sole, reasonable discretion. Furthermore, any costs incurred by the City as a result of Contractor's breach of this Agreement, including, but not limited to, costs incurred to re-bid the Services or otherwise obtain another contractor to complete the Services, may be charged against any amounts otherwise owed to Contractor. In the event such costs are greater than the amounts owed to Contractor for work completed hereunder, the City may seek collection of such cost in any legal manner. Notwithstanding the foregoing, in no event shall the City withhold any payment in retaliation for Contractor's claim of breach or default against the City.
4. Force Majeure. In the event Services cannot be performed or are cancelled due to circumstances beyond the reasonable control of either party, including, but not limited to, power or utility outage; earthquake, fire or flood; epidemic or pandemic; emergency declaration or other decree by a government entity; insurrection, riot, war or terrorist attack; disruption in air or rail traffic; or other similar cause (a "Force Majeure"), neither party shall be obligated hereunder for such cancellation or non-performance.

V. INDEPENDENT CONTRACTOR

Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Contractor and the City shall be as independent contractors, and neither the City nor Contractor shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.

- A. CONTROL. Contractor has the authority to control and direct the performance and details of the Services. Notwithstanding the foregoing, the Services must meet the City's approval and shall be subject to the City's general right of supervision to secure the satisfactory completion thereof.
- B. TAXES AND BENEFITS. **Contractor is not an employee of the City, is not entitled to workers' compensation benefits, is not entitled to unemployment insurance benefits, and is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement.** The City will not withhold or cause to be withheld federal or state taxes or social security payments from Contractor's compensation. Further, Contractor is not and shall not be entitled to benefits provided by the City to its employees, including, but not limited to, health insurance, disability insurance or pension benefits.

VI. LIABILITY AND INDEMNIFICATION

- A. CONTRACTOR LIABILITY. Contractor shall be liable and responsible for any and all liable design defects and damages to persons or property caused by or arising out of the actions, obligations or omissions of Contractor or its employees, agents, subcontractors or other persons acting under Contractor's direction or control in performing or failing to perform the Services under this Agreement.
- B. INDEMNIFICATION.
 1. Contractor. Contractor shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (collectively, the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the

actions or omissions of Contractor or its employees, agents or subcontractors, or other persons acting under Contractor's direction or control, in performance of the Services. Notwithstanding the foregoing, nothing in this subsection shall obligate Contractor to indemnify the City for the City's negligence.

2. City. Regardless of any written or oral statement to the contrary, in no event, instance or circumstance shall the City indemnify or hold harmless Contractor.
- C. SUBCONTRACTS. If Contractor engages subcontractors to perform any part of the Services other than the furnishing of goods, materials or supplies, Contractor shall include the provisions of this Section in any such subcontracts.
- D. SURVIVAL; NO LIMITATION. The provisions set forth in this Section shall survive the completion of the Services and the satisfaction, expiration or termination of this Agreement. The obligations set forth in this Section shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section.

VII. INSURANCE

- A. REQUIRED COVERAGES. Contractor shall procure and continuously maintain during the term of the Agreement, the following minimum insurance coverages:
 1. Commercial General Liability. Contractor shall procure and keep in force for the duration of this Agreement a policy of commercial general liability insurance insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury, death or property damage arising out of the performance of the Services. Coverage amounts shall be maintained at the levels set forth in such policy/ies, which shall be no less than One Million U.S. Dollars (\$1,000,000) each occurrence. Such policies shall include coverages for contractual liability. The limits of such insurance shall not limit the liability of Contractor hereunder.
 2. Automobile Liability. Contractor shall procure and keep in force for the duration of this Agreement a policy of comprehensive automobile liability insurance, include statutory personal injury protection and uninsured motorist coverage, insuring Contractor, and naming the City as an additional insured, against any liability for personal injury, bodily injury, death or property damage arising out of the use of all motor vehicles used in connection with the performance of the Services, on or off the site, whether the motor vehicles are owned, non-owned or hired. Coverage amounts shall be maintained at the levels set forth in such policy/ies, which shall be no less than a combined single limit of One Million U.S. Dollars (\$1,000,000). The limits of such insurance shall not limit the liability of Contractor hereunder.
 3. Workers' Compensation. Contractor shall provide proof of Workers' Compensation Insurance. Should Contractor have no employees providing the Services, Contractor shall sign the attached Worker's Compensation Representation form and hereby acknowledges that it will not seek Workers' Compensation benefits from the City for "on-the-job" injuries sustained while performing this Agreement.
 4. Other Insurance. Contractor shall procure and keep in force any other insurance required by applicable law.

B. TERMS OF INSURANCE.

1. General. Insurance required by this Agreement shall be with companies authorized to conduct business in Colorado and acceptable to the City and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than Twenty Thousand U.S. Dollars (\$20,000). Jurisdiction and venue for any legal action against, and any other disputes with, insurers providing coverage hereunder shall be in Jefferson County, Colorado, or Denver, Colorado.
2. Changes. Not less than ten (10) days prior to the effective date of any cancellation of, or material change in, any insurance policy required herein, Contractor shall provide written notice of such cancellation or change to the City. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a twelve (12) month tail. In the case of any "claims made" policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage as required herein. Contractor shall not do or permit to be done anything that shall invalidate the policies.
3. City Loss Recovery; Carrier Waiver of Subrogation. The policies described in this Section shall be for the mutual and joint benefit and protection of Contractor and the City. With the exception of the Professional Liability and Workers' Compensation policies, all insurance policies required herein shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under such policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of Contractor or of Contractor's officers, employees, agents, subcontractors or business invitees. Contractor hereby waives all rights of recovery, under subrogation or otherwise, related to any claim against the City, and all insurance policies required herein shall include a clause stating that the insurance carrier shall waive all rights of recovery, under subrogation or otherwise, against the City.
4. Policies Primary/Non-Contributory. With the exception of Professional Liability policies, all insurance policies required herein shall be written as primary and noncontributory.

C. EVIDENCE OF COVERAGE. Before commencing the Services, Contractor shall furnish to the City certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the City shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance and endorsements. In the event the Term of this Agreement extends beyond the period of coverage for any insurance required herein, Contractor shall, not less than ten (10) days prior to the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage in accordance with the requirements of this Agreement.

D. SUBCONTRACTS. If consent to engage subcontractors is granted pursuant to section III(B) above, Contractor shall include the insurance requirements set forth in this Agreement in all subcontracts. The City shall hold Contractor responsible in the event any subcontractor fails to procure and maintain, for the duration of this Agreement, insurance meeting the requirements set forth herein. The City reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the City's sole discretion, such variations do not substantially affect the City's interests.

VIII. COMPLIANCE WITH LAW

Contractor covenants and agrees that in performing the Services hereunder, it shall comply with all applicable federal, state and local laws, regulations and policies, including, but not limited to, the following:

- A. DRUGS, ALCOHOL AND WORKPLACE VIOLENCE. Contractor and its employees, agents and subcontractors, while performing the Services or while on City property for any reason during the term of this Agreement, shall adhere to the City's policies applicable to City employees regarding drugs, alcohol and workplace violence. A copy of such policies will be made available to Contractor upon request.
- B. EQUAL OPPORTUNITY EMPLOYMENT. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, disability, military or veteran status, or national origin. Contractor shall take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to race, color, religion, age, sex, disability, military or veteran status, or national origin. Such action shall include but not be limited to: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notice, provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- C. AMERICANS WITH DISABILITIES ACT. Contractor shall comply with applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time (the "ADA"), and any other applicable federal regulation. A signed, written certificate stating compliance with the ADA may be requested at any time during the term, or any Renewal Term, of this Agreement.
- D. COLORADO ACCESSIBILITY LAW. The City of Lakewood is subject to accessibility requirements of §§24-85-101, et seq., C.R.S. and related regulations, which generally require that any technology procured by a government and used by the public or a government employee must provide reasonable accommodation for use of such technology by disabled persons. Contractor shall comply with §§24-85-101, et seq., C.R.S. accessibility requirements and the City may request at any time during the term, or any Renewal Term, of this Agreement a signed, written certificate stating compliance with §§24-85-101, et seq., C.R.S. Contractor shall indemnify, save, and hold harmless the City, its employees, agents and assignees (collectively, the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to the Contractor's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103(2.5). To the extent applicable to the Services (or quote, proposal, RFI/RFQ etc.), Contractor agrees that the consideration and payment includes all costs and expenses needed to comply with §§24-85-101, et seq., C.R.S. and related regulations. Any additional costs to add or modify accessibility features will be the obligation of the Contractor, and any addition or change to the consideration and payment after execution of this Agreement will be disallowed.

IX. NOTICE

Notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to City:

Development Assistance Manager
City of Lakewood Planning Dept.
480 S. Allison Pkwy.
Lakewood, CO 80226
[email]

If to Contractor:

[Name, Title]
[Contractor Name]
[Address]
[Address]
[email]

XI. CONTRACTOR'S REMEDIES FOR BREACH

- A. Contractor may terminate this Agreement in the event of non-payment of sums due, in which event, Contractor shall first provide the City notice of Contractor's intent to terminate and allow the City ten (10) days within which to make payment. Contractor's termination shall become effective immediately upon the City's failure to make payment within such ten-day period.
- B. Pending resolution of any material breach by the City, Contractor may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement.

X. GENERAL PROVISIONS

- A. INTEGRATION; AMENDMENT; BINDING EFFECT. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, shall not be modified or amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.
- B. NO WAIVER. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement.
- C. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Agreement.
- D. NO ASSIGNMENT. Contractor shall not assign this Agreement without the City's prior written consent; provided, however, that no consent shall be required for an assignment by Contractor to a successor entity in the event of a sale of all or substantially all of Contractor's assets or stock or a reorganization within Contractor's existing ownership structure.
- E. GOVERNING LAW AND VENUE; RECOVERY OF COSTS. This Agreement shall be governed by the laws of the State of Colorado. Venue shall be in Jefferson County, Colorado, or in the United States District Court for the District of Colorado, as appropriate. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable court costs and attorney fees.
- F. GOVERNMENTAL IMMUNITY. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

- G. CONFIDENTIAL INFORMATION; PUBLIC DOCUMENT. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, *et seq.* (the “Act”), and as such, this Agreement may be subject to public disclosure thereunder. In the event the provisions of any exhibit or attachment hereto, or of any other document, including any electronic document, purport to require protection from public disclosure of any so-called “confidential” or “proprietary” information or data, such provisions shall be null and void to the extent inconsistent or in conflict with the Act, and the City’s good faith disclosure of any such information or data pursuant to the Act shall not constitute a breach of this Agreement.
- H. NO BINDING DISPUTE RESOLUTION. The City does not agree to any form of binding dispute resolution short of a proceeding before a court of competent jurisdiction. Any exhibit or attachment hereto, or any other document governing the provision of the Services, including any electronic document, which requires binding arbitration or any other binding extra-judicial dispute resolution process in which the final resolution is not determined by the City, shall be void and unenforceable.
- I. HEADINGS. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- J. SEVERABILITY. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- K. COUNTERPARTS; ELECTRONIC DISPOSITION. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.
- L. AUTHORITY. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.