



*City of Wyoming
Minnesota*

Request for Proposals

**Utility Rate Study
Storm Water**

Robb Linwood
City Administrator

P.O Box 188
26885 Forest Blvd
Wyoming, Minnesota 55092

651-462-0575
rlinwood@wyomingmn.org

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INTRODUCTION

The City of Wyoming (“City”) is requesting proposals from qualified vendors to prepare a rate study for its Storm water utility.

Inquiries about the engagement or the request for proposal should be addressed to:

Robb Linwood, City Administrator
rlinwood@wyomnigmn.org
651-462-0575

There is no expressed or implied obligation for the City of Wyoming to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, qualified firms must submit an electronic copy of their proposal to Robb Linwood, City Administrator, at the City offices located at 26885 Forest Blvd, Wyoming, MN 55092 **by 4:30 p.m. on September 25, 2020**. The City of Wyoming reserves the right to reject any or all proposals submitted.

The City of Wyoming reserves the right, where it may serve the City’s best interest, to request additional information or clarification from proposers or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. Following a review of the proposals, a review/recommendation for award will be made by the City Administrator to the City Council. A final decision for award of the work may be made by the City Council.

The City of Wyoming reserves the right to retain all proposals submitted and to use any concepts and ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposing firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the written contract between the City of Wyoming and the firm selected.

Tentative Project Schedule:

- August 19, 2020 solicitation for proposals begins
- September 25, 2020 proposal submittal deadline
- October 6, 2020 staff review of proposals completed and firm selected by city council
- Study completed for work session for city council November, 2020

BACKGROUND

The City of Wyoming is located in Chisago County about 30 miles north of St. Paul and Minneapolis, Minnesota. The City encompasses an area of approximately 21 square miles with a population over 8,000

The City of Wyoming is a Statutory A city under Minnesota law. The governing body consists of a mayor and four council members who are elected at large on a nonpartisan basis.

The Mayor and Council appoint a full-time City Administrator, who is responsible for overall supervision of City operations.

The City of Wyoming's adopted budget for 2020 is \$4.2 Million. The Comprehensive Annual Financial Report and Annual Budget can be found on the City's website at www.wyomingmn.org

The City currently uses Banyon Utility Billing software for the distribution, tracking and collection of utility bills.

The Federal Clean Water Act requires cities to reduce pollutants in storm water runoff. To comply with the Federal Clean Water Act, the City's storm sewer system requires modifications, improvements, increased maintenance operations, and annual inspections. To complete these storm water related activities, a dedicated funding source is necessary. Runoff which once was considered out of sight – out of mind has become a significant requirement for cities to finance.

The City of Wyoming is a MS4 permitted city. The Stormwater Program for MS4s is designed to reduce the amount of sediment and pollution that enters surface and ground water from storm sewer systems to the maximum extent practicable. Stormwater discharges associated with MS4s are regulated through the use of NPDES permits. Through this permit, the owner or operator is required to develop a stormwater pollution prevention program (SWPPP) that incorporates best management practices (BMPs) applicable to their MS4.

SCOPE OF SERVICES REQUESTED

A. Scope of Project

The purpose of this project is to provide the City of Wyoming, MN with a report establishing equitable storm water rates for residential, commercial, industrial, and institutional customers.

B. Project Tasks (Responder may propose additional tasks or activities if they will substantially improve the results of the project.)

1. Assemble and review existing historical storm water system operating data
2. Develop 5-year projections of O & M costs
3. Estimate meter reading, billing, collection, administrative, and general costs for 5 years

4. Estimate other revenue requirements such as storm water operations, maintenance replacements and capital needs financed from operating revenue
5. Determine offsets to revenue requirements such as interest income and miscellaneous fees
6. Establish revenue requirements
7. Determine adequacy of existing rates to generate the required revenue
8. Apportion costs to fixed costs and base (average) maximum day and maximum hour demands
9. Develop fixed cost based on equivalent meter calculations
10. Develop unit cost of service for base, maximum day and maximum hour demands
11. Develop rates based on peak to average demands of various customer classes
12. Prepare spread sheets to show income expenses, cash flow, and fund balances
13. Develop "what if" scenario for no increase in storm water rates and with various levels of rate increases
14. Establish new storm water rates for the next 5 years – 2021-2025
15. Develop a statement showing, total operating revenue, total expenses including O&M costs, depreciation, department servicing, net income, etcetera to test adequacy of new rates
16. Develop a recommendation for an appropriate level of reserve amounts, including an analysis of the basis of the recommendation. The Consultant will develop, as part of the recommendation, a long-term replacement and renewal plan including annual reserve targets for the future
17. Prepare a draft report
18. Review draft report with staff
19. Present report to City Council

C. MATERIALS/SERVICES to be PROVIDED by CITY

1. Materials

- a. City population projections
- b. Maps of City (as available)
- c. Residential
- d. Commercial/Industrial/Institutional
- e. Storm water billing records (to be provided, as necessary)
- f. CIP schedule
- g. Expense and revenue records
- h. General Information, as available

2. Services

- a. Access to facilities
- b. Access to available information

COMMUNICATION/PROJECT MANAGEMENT

A Project Management Team (PMT) will provide overall direction and will review all products prior to their submittal and review by Staff and City Council. Robb Linwood, City Administrator will be the Project Manager representing the City and will be the primary contact for communications and coordination of activities with the Consultant. Ultimately the City Council will be the reviewing/approving authority for the final product.

The (PMT) is anticipated to comprise representatives from the following:

- City of Wyoming Engineering and Public Works Department
- City of Wyoming Finance Department
- City of Wyoming Administration Department
- Consultant

It is anticipated the PMT will meet initially to kick off the project and discuss the anticipated project outcomes and schedule. The PMT will then meet as deemed necessary throughout the project to review interim products or to discuss project issues. The PMT may at times meet without the Consultant depending on the topic.

The Consultant will provide, at a minimum, biweekly updates, primarily through email, to update City staff on project status, discuss issues and review schedules. The Consultant shall provide written agendas for meetings they are responsible for overseeing such as PMT meetings.

Beyond the PMT meetings and communication stated above, the Consultant should be prepared to attend two City Council meetings and workshops to discuss the process and recommended actions.

PRODUCT/FINAL REPORT

All electronic and paper interim review documents, such as tables, graphs, charts, text, models and maps, through the adoption of the final report, shall be included in the scope of work as described above.

The final products of this project shall include a final bound report, including all supporting materials such as tables, charts, graphs, figures and maps. The City will require final copies of the plans to be available both in paper form as well as electronically in PDF format. The Consultant shall provide the City with four paper copies and one electronic copy of the final report.

PROPOSAL FORM AND CONTENTS

The Consultant's submittal must contain and clearly identify the following elements.

A. Letter of Transmittal

1. Name of the firm, local address, e-mail address and telephone and fax numbers of contact person during period of proposal evaluation and the date of your submittal.

B. Table of Contents

Include a clear identification of the material by section and page number.

C. Consultant Qualifications / Profile

Include qualifications of the firm as it relates to preparing storm water rate analysis, including previous experience with similar projects for cities or other units of government.

D. Key Personnel

The Consultant shall provide the names, qualifications and resumes of key personnel that will be assigned to this work and identify the lead client service contact that will be responsible for the management and administration of a contract with the City.

E. Organizational Structure

The proposal must include the organizational/project management structure identifying key project personnel, their roles and responsibilities and the time available for each individual to work on this project.

F. Project Approach/Work Plan

A detailed explanation of the overall approach to be taken to complete the project along with a detailed work plan must be provided. The work plan must contain a description of each task to be performed, identify the interrelationships among the tasks, clearly identify major review and decision points and specify the deliverables and work products for each task. The work plan must address, at a minimum, each of the items outlined under Scope of Services Section in the RFP.

G. Project Schedule

The proposal must identify the major tasks and dates of accomplishment. The schedule must indicate tasks which the Consultant anticipates will be done by the City. Work on this project should be initiated within two weeks of the execution of the contract and diligently performed thereafter. The schedule will be monitored by the City to evaluate the Consultant's performance on the project. Any deviation from the milestones as proposed by the Consultant shall be approved by the City.

Once a Consultant is selected, a kickoff meeting will be held where among other things; the schedule will be reviewed and adjusted as appropriate based on individual project tasks and input from the Consultant.

H. Cost

A detailed cost estimate for completing the project, broken down by task, personnel and hours must be provided. Please identify the personnel that correspond to each title in the cost estimate. The proposal must indicate the total cost and itemize each task for the project. The proposal should include hourly rates for specific professional services, including meeting and presentation costs. Payment of fees will be made every thirty days upon receipt of a progress report and an invoice itemizing services performed and hours worked. Any work identified as optional in the Scope of Services shall be listed separately from required work. **A total cost not to be exceeded for all work is required by the proposal.**

I. Exceptions and Deviations

Any exceptions to the requirements in this RFP, including the language in the Contract Negotiations and Terms Section, must be included in the proposal submitted by the Proposer. Segregate such exceptions as a separate element of the proposal under the heading "Exceptions and Deviations."

J. Additional Information

Any other information that the Proposer believes to be pertinent, but not specifically asked for elsewhere in the RFP, may be included under the heading "Additional Information."

K. References

For the key personnel, include a brief list of previous or current project contacts that are similar to this project that may be used as references to confirm that the key personnel are capable of performing this work.

SELECTION

Proposals that comply with the instructions set forth in this document will be evaluated by the City of Wyoming. Proposals will be evaluated on the following criteria:

- Understanding of the work to be completed.
- Quality of the approach presented in addressing the issues identified in this RFP.
- Experience in performing similar projects.
- Experience of individuals the Consultant will assign to this work.
- Proposed cost.
- The ability to perform the work within the specified time.
- Proposed schedule for completing the work.

The City reserves the right to accept or reject any or all proposals received, in whole or in part. At its discretion, the City of Wyoming may choose to waive immaterial deviations from the RFP instructions. If necessary, a short list of Consultants will be called for an interview. Selection of a Consultant is expected in September of 2020. The Consultant selection will be made by the City Council.

This RFP does not commit the City of Wyoming to enter into a contract, nor does it obligate the City of Wyoming to pay for any costs incurred by the Consultant in the preparation and submission of proposals or in anticipation of a contract.

CONTRACT NEGOTIATION AND TERMS

A. Negotiations and Contract Execution

Upon completion of the evaluation process, the City of Wyoming will enter into negotiations with the responder(s) whose proposal offers the best solution and best value possible, as determined in the evaluation process.

This project will have an executed contract between the Consultant and the City. The City reserves the right to negotiate the final terms and conditions of the contract to be executed. Should the City and a Consultant be unable to mutually agree upon the entire contract, the City reserves the right to discontinue negotiations, select another Consultant or reject any or all proposals. The City reserves the right to negotiate with more than one Consultant simultaneously. Upon completion of negotiations agreeable to the City and Consultant, a contract shall be executed.

B. Contract Terms

1. No elected official or employee of the City who exercises any responsibilities in the review, approval or implementation of the proposal or contract shall participate in any decision, which affects his or her direct or indirect financial interest.

2. It is a breach of ethical standards for any person to offer, give, or agree to give any present or past City employee or Council person, or for any City employee or Council person to solicit, demand, accept, or agree to accept from another person or firm, a gratuity or an offer of employment whenever a reasonable prudent person would conclude that such consideration was motivated by an individual, group or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded to the general public.
3. No member, officer, employee or agent of the City or of a local public body during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or the process thereof.
4. The Contractor shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of the City and subject to such conditions and provisions as the City may deem necessary. The Contractor shall be responsible for the performance of all subcontractors.
5. To remove any potential or actual conflict of interest, a Consultant representing any private party client submitting a project or activity to the City shall not represent or review the project or activity on behalf of the City.
6. The Consultant shall not accept any private client or project which, by nature, places it in ethical conflict during its representation of the City of Wyoming.
7. During the performance of this Contract, the Contractor agrees to the following: No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.
8. The City shall have access to all data, information, drawings, reports and other information collected, generated or produced by the Consultant, regardless of format or media. Said data, information, drawings, reports and other information, regardless of format or media, shall be the property of the City of Wyoming.
9. All data collected, created, received, maintained, or disseminated for any purposes by the activities of Contractor, because of this contract, is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such act now in force or as adopted, as well as federal regulations on data privacy. Trade Secrets: Assuming the material that the organization would supply is not just proprietary, but also constitutes a trade secret under the Uniform Trade Secrets Act definition, it could be protected under Minn. Stat. Section 13.37 subd. 1(b) and subd. 2. The MGDPA definition of "trade secret information" tracks the language of the UTSA, and thus includes "government data,

including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.” If it meets this definition, then subd. 2 makes it nonpublic data with regard to data not on individuals, and private data with regard to data on individuals. Beyond the protections of this provision, it would be difficult for a city to keep a promise of confidentiality.

10. The Consultant will maintain records that reflect all revenues, costs incurred and services provided in the performance of the Agreement. The Consultant will also agree that the City, the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the Consultant which are relevant to the contract.
11. The Consultant will need to agree that it will defend, indemnify, and hold harmless the City against any and all liability, loss, damages, costs and expenses, which the City or office may hereafter sustain, incur, or be required to pay by reason of any negligent act or omission or intentional act of the Consultant, its agents, officers, or employees during the performance of the Agreement.
12. The Consultant will need to further agree that in order to protect itself as well as the City under the indemnity provision set forth above, it will at all times during the term of the Contract keep in force the following minimal insurance protection in the limits specified:

Commercial General Liability (or in combination with an umbrella policy)

- \$2,000,000 Each Occurrence
- \$2,000,000 Products/Completed Operations Aggregate
- \$2,000,000 Annual Aggregate

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability

Automobile Liability

- \$2,000,000 Combined Single Limit – Bodily Injury & Property Damage
- Including Owned, Hired & Non-Owned Automobiles

Workers Compensation

Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Employer's Liability with minimum limits are as follows:

- \$500,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$500,000 – Bodily Injury by Accident

The City shall be named as an additional insured on the general liability and umbrella policies on a primary and non-contributory basis.

The Consultant shall secure and maintain a professional liability insurance policy. Said policy shall insure payment of damages for legal liability arising out of the performance of professional services for the City, in the insured's capacity as Consultant, if such legal liability is caused by a negligent act, error or omission of the insured or any person or organization for which the insured is legally liable. The policy shall provide minimum limits of \$2,000,000 with a deductible maximum of \$125,000 unless the City agrees to a higher deductible.

Prior to the effective date of the Agreement, the Consultant will furnish the City with certificates of insurance as proof of insurance for general Liability and Auto Liability.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days' notice thereof to the City.

13. The Consultant shall comply with all applicable Federal and State statutes and regulations as well as local ordinances now in effect or hereafter adopted. Failure to meet the requirements of the above may be cause for cancellation of the contract effective the date of receipt of the Notice of Cancellation.
14. It will need to be agreed that nothing in the Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Consultant as the agent, representative, or employee of the City for any purpose or in any manner whatsoever. The Consultant is to be and shall remain an independent contractor with respect to all services performed under the Agreement.

The Consultant represents that it has, or will secure at its own expense, all personnel required in performing services under the Agreement. Any and all personnel of the

Consultant or other persons, while engaged in the performance of any work or services required by the Consultant under the Agreement, shall have no contractual relationship with the City and shall not be considered employees of the City.

15. Any material alteration, modification or variation shall be reduced to writing as an amendment and signed by the parties. Any alterations, modifications or variations deemed not to be material by agreement of the City and the Consultant shall not require written approval.

16. Termination:

The City may cancel the Contract for any reason without cause upon thirty days written notice, except that if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of the Contract, the other party shall have the right to terminate the Contract, if the default has not been cured after a ten day written notice has been provided. If termination shall be without cause, the City shall pay Consultant all compensation earned to the date of termination. If the termination shall be for breach of the Contract by Consultant, the City shall pay Consultant all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Consultant under the Contract shall, at the option of the City, become the property of the City, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the Contract by the Consultant. The City may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute.

17. Prior to the processing of any and all payments to the contractor pursuant to this contract, compliance with City Finance Department regulations on the completion and filing of W-9 forms and other IRS and Minnesota Department of Revenue taxing forms is required.

APPENDIX A

UTILITY FEES & CHARGES

SWU Designation	REF	Quarterly Rate
Agricultural/Single Family Residential/One and Two Family Residential/Rural Residential	1.0	\$2/unit
High Density Residential/Manufactured Homes	2.7	\$16.20/acre
Commercial	2.7	\$16.20/acre
Central Business	2.7	\$16.20/acre
Office and Health Care	2.7	\$16.20/acre
Industrial (Urban)	3.5	\$21.00/acre
Industrial (Non-Urban)	1.0	\$2/unit
Carlos Avery WMA (Exempt)	-	-

APPENDIX B

CITY OF WYOMING PROPOSER WARRANTIES

- A. Proposer warrants that it is willing and able to comply with State of Minnesota laws with respect to foreign (non-state of Minnesota) corporations.
- B. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts or omissions of any officers, employees or agents thereof.
- C. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the City of Wyoming.
- D. Proposer warrants that all information provided in connection with this proposal is true and accurate.
- E. Proposer certifies that it can and will provide and make available, at a minimum, all services set forth in the "Scope of Services Requested" section of the City's request for proposals.

Signature of Official: _____

Name (typed): _____

Title: _____

Firm: _____

Date: _____

APPENDIX C

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made this _____ day of _____, 2020, by and between the **CITY OF WYOMING**, a Minnesota municipal corporation ("City") and _____, _____ ("Consultant").

IN CONSIDERATION OF THEIR MUTUAL COVENANTS THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Consultant to furnish the services set forth in the Contract Documents. The Consultant agrees to perform the services.

2. CONTRACT DOCUMENTS. The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Professional Services Agreement.
- B. Consultant's proposal dated _____ re: City of Wyoming Utility Rate Study (Storm Water Services).
- C. Insurance certificate.

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document "A" has the first priority and Contract Document "C" having the last priority.

3. COMPENSATION. Consultant shall be paid by the City for the services described in Contract Documents on an hourly basis, inclusive of reimbursables, taxes and other charges. The not to exceed fee shall not be adjusted if the estimated hours to perform a task, the number of estimated required meetings or any other estimate or assumption is exceeded. Consultant shall request payment for services rendered on a monthly basis. The monthly payment applications from Consultant shall identify work completed.

4. CHANGE ORDERS. All change orders, regardless of amount, must be approved in advance and in writing by the City. No payment will be due or made for work done in advance of such approval.

5. DOCUMENTS. The City shall be the owner of all documents, reports, studies, analysis and the like prepared by the Consultant in conjunction with this contract.

6. STANDARD OF CARE. Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by

members of the profession under similar circumstances in Dakota County, Minnesota. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss or damages proximately caused by Consultant's breach of this standard of care. City shall not be responsible for discovering deficiencies in the accuracy of Consultant's services. Consultant shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of Consultant without additional compensation.

7. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Consultant shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided.

8. INDEMNIFICATION. The Consultant shall indemnify and hold harmless the City, its officers, agents, and employees, of and from any and all claims, demands, actions, causes of action, including costs and attorney's fees, arising out of or by reason of the execution or performance of the work or services provided for herein to the comparative extent they are caused by Consultant's negligent acts or omissions or those negligent acts or omissions of persons for whom Consultant is legally responsible.

9. COPYRIGHT. Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by them, and they shall hold harmless the City from loss or damage resulting therefrom.

10. INSURANCE. Consultant shall secure and maintain such insurance as will protect Consultant from claims under the Worker's Compensation Acts, automobile liability, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability (or in combination with an umbrella policy)
\$2,000,000 Each Occurrence
\$2,000,000 Products/Completed Operations Aggregate
\$2,000,000 Annual Aggregate

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Automobile Liability
\$2,000,000 Combined Single Limit – Bodily Injury & Property Damage
Including Owned, Hired & Non-Owned Automobiles

Workers Compensation
Workers' Compensation insurance in accordance with the statutory

requirements of the State of Minnesota, including Employer's Liability with minimum limits are as follows:

- \$500,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$500,000 – Bodily Injury by Accident

The City shall be named as an additional insured on the general liability and umbrella policies on a primary and non-contributory basis.

The Consultant shall secure and maintain a professional liability insurance policy. Said policy shall insure payment of damages for legal liability arising out of the performance of professional services for the City, in the insured's capacity as Consultant, if such legal liability is caused by a negligent act, error or omission of the insured or any person or organization for which the insured is legally liable. The policy shall provide minimum limits of \$2,000,000 with a deductible maximum of \$125,000 unless the City agrees to a higher deductible.

Before commencing work, the Consultant shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to City.

11. INDEPENDENT CONTRACTOR. The City hereby retains the Consultant as an independent contractor upon the terms and conditions set forth in this Agreement. The Consultant is not an employee of the City and is free to contract with other entities as provided herein. Consultant shall be responsible for selecting the means and methods of performing the work. Consultant shall furnish any and all supplies, equipment, and incidentals necessary for Consultant's performance under this Agreement. City and Consultant agree that Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's agents or employees are in any manner agents or employees of the City. Consultant shall be exclusively responsible under this Agreement for Consultant's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

12. SUBCONTRACTORS. Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. Consultant shall comply with Minnesota Statute § 471.425. Consultant must pay subcontractor for all undisputed services provided by Subcontractor within ten days of Consultant's receipt of payment from City. Consultant must pay interest of 1.5 percent per month or any part of a month to subcontractor on any undisputed amount not paid on time to subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

13. ASSIGNMENT. Neither party shall assign this Agreement, or any interest arising herein, without the written consent of the other party.

14. **WAIVER.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

15. **ENTIRE AGREEMENT.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

16. **CONTROLLING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

17. **RECORDS.** The Consultant shall maintain complete and accurate records of time and expense involved in the performance of services.

18. **AUDIT DISCLOSURE AND DATA PRACTICES.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. This Agreement is subject to the Minnesota Government Data Practice Act, Minnesota Statutes Chapter 13 (Data Practices Act). All government data, as defined in the Data Practices Act Section 13.02, Subd. 7, which is created, collected, received, stored, used, maintained, or disseminated by Consultant in performing any of the functions of the City during performance of this Agreement is subject to the requirements of the Data Practice Act and Consultant shall comply with those requirements as if it were a government entity. All subcontracts entered into by Consultant in relation to this Agreement shall contain similar Data Practices Act compliance language.

CITY OF WYOMING

BY: _____
Lisa Iverson Mayor

BY: _____
Its

AND _____
Robb Linwood, City Administrator/Clerk

AND _____