

City of Lakewood
REQUEST FOR QUALIFICATIONS

ERP CONSULTING SERVICES

**SUBMIT YOUR PROPOSAL VIA EMAIL
NO LATER THAN 5:00 PM PST,
Tuesday, January 25, 2022 TO:**

**City of Lakewood
Jose Gomez, Director of Finance & Administrative Services
Jgomez@Lakewoodcity.org**

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SECTION I
NOTICE OF REQUEST FOR QUALIFICATIONS
ERP Consulting Services

BACKGROUND

NOTICE IS HEREBY GIVEN that the City of Lakewood is seeking qualifications from professional implementation consultant firms to provide project management support for the upgrade of the City's on-premises Tyler Technologies MUNIS ERP System from Version 11.3 to the current version generally available as of June 2022 (TBD) and the migration of Tyler Forms printing/archiving processes from Adobe Central to ReadyForms, as well as an optional Phase II to include the implementation of the Executime Timekeeping module. The consultant would act as a project manager, coordinate user training to be provided by Tyler Technologies, and lead acceptance testing efforts to be conducted by City staff for Phase I and Phase II (City Option).

This Request for Qualifications (RFQ) provides information about the City of Lakewood, the required scope of services, the consultant selection process, and the minimum information that must be included in the RFQ Response. Proposals will be evaluated based on the overall best value to the City based on experience, quality, service, price, and any other criteria set out herein including but not limited to, the Consultant's ability to meet the requirements, qualifications, and competencies set out herein.

SUBMITTAL DEADLINE

TO BE CONSIDERED, EMAILED PROPOSALS MUST BE RECEIVED BY JOSE GOMEZ
JGOMEZ@LAKEWOODCITY.ORG NO LATER THAN **TUESDAY, JANUARY 25, 2022 at 5:00 P.M. PST**. Failure of, or disturbances in delivery is not a legitimate reason for proposals submitted after the above due date. If requested, receipt confirmation will be provided. The City may extend the deadline at its discretion.

SECTION II

SCOPE OF SERVICES/SCOPE OF WORK

The Scope of Work is divided into two phases. Phase I includes project management support for the implementation of an upgrade of the City's currently-used Tyler Technologies MUNIS ERP modules, as well as support for the migration of Tyler Forms printing/archiving processes from Adobe Central to ReadyForms. The City is currently on MUNIS Version 11.3 and will migrate to the most current MUNIS version as of June 2022 (TBD). The MUNIS modules to be upgraded in Phase I are listed in the current support contract between Tyler Technologies and the City of Lakewood attached as Exhibit A in this document. All modules listed are currently in use by the City. The Utility Billing and Business License modules are excluded from this scope of work.

The Consultant may include a proposal for Phase II project management services to support the implementation of the Executime Timekeeping System. The City maintains Phase II as completely optional as it is not certain that it will proceed with this implementation. If it does, this effort is expected to begin in early calendar year 2023 after the upgrade of the current MUNIS functionality is completed.

Consultant will act as the Project Manager for all aspects of Phase I and optional Phase II implementations including the following:

- Assist in organizing and participating in the project kickoff, which will identify the overall implementation methodology, roles and responsibilities of all involved, and the timeline.
- Management of key project activities to ensure both Tyler as well as City staff are performing required activities.
- Review of all key Tyler activities related to the implementation including the testing phase.
- Review and resolution of key issues that might arise throughout the project.
- Communication with the core management team to review issues and project status.
- Participation in the rollout to City staff regarding the new features of the software that impact them.
- Review of Tyler Technologies billings prior to payment.

PHASE I

Project Timeline

Tyler Technologies implementation teams are scheduling upgrades far in advance and we have negotiated the following dates that cannot be changed.

March 28, 2022 11:00am – 12:00pm – Tyler Forms Migration Kickoff Meeting (to be held remotely)

In order to make sure that all of our custom forms are migrated to ReadyForms in plenty of time to be tested before the MUNIS upgrade, The Tyler Forms Migration team is holding a date for us for a kickoff meeting. The Tyler forms and deployment teams are very busy, so they're scheduling meetings well in advance. This meeting will explain the process of migration and what is expected of the forms stakeholders in terms of testing and verification of the forms.

The Consultant will be required to attend this meeting and will work with the City and Tyler Forms team to facilitate the migration of the following Tyler Forms and manage the acceptance verification:

- *Accounts Payable Checks, File Copy & EFT*
- *Accounts Payable Check & File Copy – Redevelopment, Successor Agency (Housing) & Successor Agency (Projects)*
- *Accounts Receivable Invoice & Statement*
- *Payroll Checks & Direct Deposit Advice*
- *Purchase Order – Department, File Copy, Receiving, Vendor & Vendor w/no backer Copies*

June 20 –24, 2022 – Installation of Test Environment and initial data migration by Tyler Technologies

Consultant will work with Tyler Technologies and City staff to make sure that the Tyler Forms listed above are accepted and ready to be installed by Tyler Technologies prior to this installation week. Consultant does not need to be available during the installation.

July – November, 2022 – Implementation, Acceptance Testing, Training

Consultant will provide project management support to ensure a successful implementation of the MUNIS ERP system on the test servers, manage acceptance testing and problem resolution, recommend and schedule appropriate user training for City staff to be provided remotely by Tyler Technologies, and be ready for the live cut-over. This is where the bulk of the project management effort will take place.

December 9-10, 2022 – Live Cutover

Tyler Technologies will copy the Version 11.3 data to the new servers.

December 12-23, 2022 – Post go-live support

Consultant will work with City staff and Tyler Technologies to provide support for any post go-live issues as they arise.

PHASE II (AT CITY’S OPTION)

The City is considering purchasing the Executime Timekeeping module to be implemented sometime in early 2023 after the upgrade of the current MUNIS functionality is completed. Tyler Technologies’ proposal for this module is included as Exhibit B in this document. The Consultant may include estimated hours and cost for project management support for the implementation of this module in the proposal. There are two alternatives within this option:

- Alternative A - Implementation for only 345 part-time employees
- Alternative B - Implementation for 345 part-time employees and 180 full-time employees

SECTION III

INSTRUCTIONS TO CONSULTANTS

Examination of Proposal Documents

By submitting a proposal, consultant represents that it has thoroughly examined and become familiar with the work requested outlined in the scope of services and can perform quality work to achieve the City's objectives.

Addenda

Any changes to the requirements will be made by written addendum to this RFQ. Any written addenda issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Agreement. City will not be bound to any modifications to or deviations from the requirements set forth in this RFQ as the result of oral instructions.

If a Consultant discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFQ, the proposer should immediately provide the City written notice of the problem and request that the RFQ be clarified or modified. Without disclosing the source of the request, the City may modify the documents prior to the date fixed for submission of proposals by issuing an addendum.

California Public Records Act (CPRA)

All proposals submitted in response of this RFQ become the property of the City and under the Public Records Act (Government Code Section 6250 et. Seq.) are public record, and as such, may be subject to public review. However, the proposals shall not be disclosed until a recommendation for action is made to the City Council.

If a proposer claims a privilege against public disclosure for trade secret or other proprietary information, such information must be clearly identified in the proposal. Note that under California Law, price proposal to a public agency is not a trade secret.

CITY CONTACT

General questions regarding this RFQ are to be directed to the following:

City of Lakewood - Finance & Administrative Services

Attn: Jose Gomez

Email: JGomez@Lakewoodcity.org

Submission of Proposals

Date and Time

Proposals must be submitted on or before Tuesday, January 25, 2022 at 5:00 P.M. PST.

Proposals received after the above specified date and time will not be accepted by the City.

How to Submit

Consultant shall submit response to the following:

City of Lakewood - Finance & Administrative Services

Attn: Jose Gomez

Email: JGomez@Lakewoodcity.org

Consultant shall ensure that proposals are received by the City on or before the specified date and time. Failure to adhere to the deadline will result in disqualification. If requested, receipt confirmation will be provided.

Acceptance of Proposals

1. City reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
2. City reserves the right to withdraw or cancel this RFQ at any time without prior notice, and the City makes no representations that any contract will be awarded to any proposer responding to this RFQ.
3. City reserves the right to postpone proposal openings for its own convenience.
4. Proposals received by the City are public information.
5. Submitted proposals are not to be copyrighted.

Pre-Contractual Expenses

City shall not, in any event, be liable for any pre-contractual expenses incurred by proposer in the preparation of its proposal. Consultant shall not include any such expenses as part of its proposal.

SECTION IV

REQUIRED PROPOSAL CONTENT

Proposal Format and Content

This section is intended to provide guidelines to the proposer regarding features which the City will look for and expect to be included in the proposal.

Emailed proposal responses shall be provided in a PDF file format with 12-point font, single-spaced and submitted on a format that will print on 8 ½" x 11" size paper. The proposer(s) should not include any unnecessary elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise.

Letter of Transmittal

The Letter of Transmittal shall be addressed to the City of Lakewood and, at a minimum, contain the following:

- (1) Identification of proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, telephone number, email, and website. Include name, title, address, email, and telephone number of the contact person identified during period of proposal evaluation.
- (2) Identification of all proposed sub-consultants (if any) including legal name of company, contact person's name and address, phone number. Relationship between proposer and sub-consultant, if applicable.
- (3) A statement to the effect that the proposal shall remain valid for a period of no less than 90 days from the date of submittal.

Technical Proposal

Qualifications, Related Experience, and References of Consultant

This section of the proposal should establish the ability of proposer to satisfactorily perform the required work by reasons of experience in performing work of the same or similar nature; demonstrated experience working with other public agencies; strength and stability of the proposer; staffing capability; workload; record of meeting schedules on similar contracts; and supportive client references. Most recent references preferred.

Consultant to:

- (1) Provide an overview of the proposal (including the firm's relevant experience), a summary of the proposer's understanding of the requested Scope of Work, and its approach to providing those services.
- (2) Describe the methods by which your firm will fulfill the services requested in the Scope of Work and other sections. Identify any services the City may not have contemplated that may contribute to the success of the implementation.
- (3) Provide a detailed description of services as it relates to working with Tyler Technologies and City of Lakewood management and key users of the MUNIS ERP system.
- (4) A brief description of your firm's background, size, office locations in California, and history as it may be relevant to the services required.
- (5) Describe your experience conducting similar implementation services.
- (6) References – Please provide three (3) client references that can speak to the proposer's experience implementing Tyler Technologies MUNIS ERP. Ideal references will be of client agencies of similar size and service capacity.

Proposed Staffing and Organization

This section of the proposal should establish the method that will be used by the proposer to manage the contract as well as identify key personnel assigned. Proposed staffing and organization are to be presented by proposer identified in the Scope of Work.

Consultant to:

- (1) Provide general information about the primary contact who would be able to answer questions about the proposal. Include name, title, telephone number, and email address of the individual.
- (2) Provide names and titles of management personnel.
- (3) Provide education, experience and applicable professional credentials of contract staff proposed for the City's engagement. Include applicable professional credentials of key contract staff.

- (4) Furnish brief resumes (no more than one page each) for key personnel.
- (5) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm. Include any municipal agencies that each key personnel have worked with in the past five (5) years and their level of involvement as well as the name of the firm they worked for, if not the current proposing firm, during these prior engagements.
- (6) Include an organizational chart that clearly delineates communication/reporting relationships among the staff, including sub-consultants.
- (7) Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the contract shall be removed or replaced without the prior written concurrence of the City.

Detailed Work Plan

Consultant shall provide a narrative that addresses the Scope of Work and shows Consultant's understanding of City's needs and requirements.

The Consultant shall:

- (1) Describe the proposed approach and work plan for completing the services specified in the Scope of Work. The description of the approach shall discuss the services in sufficient detail to demonstrate the proposer's ability to accomplish the City's objectives.
- (2) Describe the timeline for the work plan for completing the services specified in Scope of Work, including identifying key benchmarks for each phase of project.
- (3) Describe approach to managing resources, including a description of the role(s) of any sub-consultants, if applicable, their specific responsibilities, and how their work will be supervised. Identify methods that proposer will use to ensure quality, budget, and schedule control.

Fee Proposal

Submitted proposal should identify the service type, service description, hourly rate, estimated number of hours, and the extended cost.

PHASE I COMPONENT

Service Type	Role	Hourly Rate	Support Hours	Extended Cost
Project Management	Project Manager			
Other (if applicable)				
Contingency*				
			TOTAL	

PHASE II COMPONENT (OPTIONAL – AT CITY’S DISCRETION. FOR IMPLEMENTATION IN 2023)

Alternative A (Executime implementation for 345 part-time employees)

Service Type	Role	Hourly Rate	Support Hours	Extended Cost
Project Management	Project Manager			
Other (if applicable)				
Contingency*				
			TOTAL	

Alternative B (Executime implementation for 345 part-time employees and 180 full-time employees)

Service Type	Role	Hourly Rate	Support Hours	Extended Cost
Project Management	Project Manager			
Other (if applicable)				
Contingency*				
			TOTAL	

* If needed, please included any recommended contingency amount. List any reimbursable expenses.

Describe any remaining fees or additional fees not included above.

Exceptions and Deviations

The proposer(s) shall enter into an agreement with the City based upon the contents of the RFQ and the firm's proposal. The City's standard form of agreement is included in Section VII. The proposer(s) shall carefully review the agreement, especially with regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions, technical or contractual, requested to the standard contract.

SECTION V

EVALUATION AND AWARD

Evaluation Criteria

City will evaluate the proposals received based on the following criteria outlined below. Respondents who are not actively engaged in providing services of the nature proposed in their response to this request and/or who cannot clearly demonstrate to the satisfaction of the City their ability to satisfactorily perform the work in accordance with the requirements set forth in this request will not be considered. The City shall be the sole judge of the qualifications and services and its decision shall be final. Discussions may be conducted with respondents who submit qualifications determined to be reasonably acceptable of being selected for award. Any changes to the RFQ requirements will be made by addendum. All addenda shall be signed by proposers and attached to the proposal. Failure to attach any addenda may render the proposal non-responsive and cause it to be eliminated from consideration.

City will evaluate the proposals received based on the following criteria:

1. **Qualifications of the Firm** - technical experience in performing work of a similar nature with at least 5 years of experience in software consulting for legacy system transitions to new software for government organizations; experience working with public agencies is mandatory; strength and stability of the firm; and assessment by client references.
2. **Project Management Approach** - qualifications of proposed key personnel; logic of organization; and adequacy of labor commitment and resources to satisfactorily perform the requested services and meet the City's needs.
3. **Detailed Work Plan** - thorough understanding of the City's requirements and objectives; logic, clarity, specificity, and overall quality of work plan.
4. **Fee Proposal** - reasonableness of proposed fees.

The City will select a firm based upon the responding firms' qualifications and experience, together with its responses to the requests for information set forth above. It should be noted that none of these factors in and of themselves are determinative, and the City reserves the right to select a firm on any basis that is in the best interests of the City. The City may contact firms in response to questions raised in their proposals and the City reserves the right to cancel this solicitation without selecting any firms.

After the submittals are evaluated, the City, at its sole discretion, may elect to interview all, some, or none of the proposers. The interview will help to clarify each proposal, approach and qualifications for the project. Consultants may be asked to submit additional documentation at or after the interview stage. Based upon the interview and evaluation of the proposals, the top-ranked firm will be recommended to the City Council. In addition, the City reserves the right to select a proposal without conducting interviews or abandon this RFQ. Final selection of a firm and authority awarding the contract to proceed with these services shall be at the sole discretion of the City Council.

Evaluation Procedure

An Evaluation Committee will review all proposals. The committee may be comprised of City staff and may include outside consultants. The City reserves the right to request clarification of additional information from any firm at any time. The committee will recommend to the City Manager the proposal which is most advantageous to the City. The City Manager will then forward its recommendation to the City Council for its consideration and final action.

Award

The City of Lakewood may negotiate contract terms with the selected proposer(s) prior to award, and expressly reserves the right to negotiate with several proposers simultaneously. However, since the selection and award may be made without discussion with any proposer, the proposal submitted should contain proposer's most favorable terms and conditions.

Special Terms and Conditions

- The City reserves the right to periodically inspect service levels and progress.
- Consultant will cooperate with any requests for performance data or progress updates.
- The City has the right to terminate or cancel services upon thirty (30) days written notice without cause and pay the consultant the value of actual work satisfactorily performed up to the date of termination.
- Consultant is required to obtain a City of Lakewood Business License pursuant to the City's Municipal Code.

SECTION VI
EXHIBITS

EXHIBIT A

Tyler Technologies MUNIS modules:

- Accounting/GL/Budget/AP
- Accounts Receivable
- Contract Management
- General Billing
- Human Resources Management
- Inventory
- Crystal Reports
- MUNIS Office
- Payroll
- Project Accounting
- Purchase Orders
- Requisitions
- Tyler Form Processing
- Role-tailored Dashboard

EXHIBIT B

Pages 16-21

Alternative A (Executime implementation for 345 part-time employees)

Pages 12-27

Alternative B (Executime implementation for 525 employees – 180 full-time and 345 part-time)



Quoted By: Karen Grosset
 Quote Expiration: 04/30/22
 Quote Name: City of Lakewood - ERP - ExecuTime Time and Attendance 345
 Quote Description: ExecuTime Time and Attendance 345

Sales Quotation For:

City of Lakewood
 5050 Clark Ave
 Lakewood CA 90712-2603
 Phone: +1 (562) 866-9771

Tyler Software and Related Services

Description	Qty	License	Hours	Module Total	Year One Maintenance
Human Resources Management					
ExecuTime Time & Attendance - Up to 350 Employees	1	\$ 20,940	128	\$ 20,940	\$ 4,188
ExecuTime Time & Attendance Import	1	\$ 5,145	0	\$ 5,145	\$ 1,029
ExecuTime Time & Attendance Mobile Access	1	\$ 5,075	0	\$ 5,075	\$ 1,015
TOTAL		\$ 31,160	128	\$ 31,160	\$ 6,232

Tyler Annual and Related Services

Description	QTY	Imp. Hours	Annual Fee
Recurring Services			
Tyler Disaster Recovery Service	1	0	\$ 1,558
Tyler System Management Services Contract	1	0	\$ 1,558

TOTAL: **0** **\$ 3,116**

Professional Services

Description	Quantity	Unit Price	Extended Price	Maintenance
Project Management	16	\$ 185	\$ 2,960	\$ 0
Remote Implementation	128	\$ 185	\$ 23,680	\$ 0
TOTAL			\$ 26,640	\$ 0

3rd Party Hardware, Software and Services

Description	Qty	Unit Price	Unit Discount	Total Price	Unit Maint/SaaS	Unit Discount	Total Maint/SaaS
Touchscreen 10: Proximity Reader (HID)	1	\$ 2,410	\$ 0	\$ 2,410	\$ 241	\$ 0	\$ 241
TOTAL				\$ 2,410			\$ 241

Summary

One Time Fees

Recurring Fees

Total Tyler Software	\$ 31,160	\$ 6,232
Total Annual	\$ 0	\$ 3,116
Total Tyler Services	\$ 26,640	\$ 0
Total Third-Party Hardware, Software, Services	\$ 2,410	\$ 241
Summary Total	\$ 60,210	\$ 9,589
Contract Total	\$ 69,799	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

All Primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Standard Project Management responsibilities include project plan creation, initial stakeholder presentation, bi-weekly status calls, updating of project plan task statuses, and go-live planning activities.

Tyler's Disaster Recovery Service is calculated at 25% of the Munis annual maintenance. There is a \$5,000 minimum annual fee for Disaster Recovery service. The Disaster Recovery fees are applicable only to one Live Munis database and excludes all test and training databases. Disaster Recovery Services are invoiced annually in advance upon our receipt of your data. Disaster Recovery services will be provided in accordance with the terms of service for Disaster Recovery Services found here: <https://www.tylertech.com/terms/disaster-recovery-terms-of-service>.

Tyler System Management Services is calculated at 25% of the Munis annual maintenance. There is a \$2,500 minimum annual fee. Systems Management Services are invoiced when you sign this sales quotation and are provided in accordance with the terms of service for Tyler Systems Management found here: <https://www.tylertech.com/terms/tyler-systems-management-terms-of-service>.

If a Tyler client desires clocks that do not have direct connectivity back to the network server ExecuTime resides on, then a VPN device installation, to be provided at Tyler's then-current prices, will be needed for every location where a clock may reside. Clocks will be shipped upon receipt of a signed quote or addendum. Clock prices include Tyler instruction regarding clock configuration and connection to the ExecuTime software. Client is responsible for clock installation and connection to applicable network. If annual maintenance is purchased at the same time as the applicable clock

is purchased, the maintenance period for the clock will begin when the clocks is shipped. Annual maintenance will automatically renew upon the expiration date of the then current term (with each renewal being a "Renewal Term" unless either party indicates its decision to not renew at least thirty (30) days in advance of a Renewal Term. If annual maintenance for a clock is added at a future date, the annual maintenance term will begin upon receipt of a signed quote unless indicated otherwise. The maintenance plan includes direct replacement of the clock if it cannot be fixed through the standard helpdesk process provided, however, clocks that have been damaged due to neglect or misuse, vandalism, electrical surges, terrorism, or alterations done by other than a Tyler representative are not provided at no charge. Upon request, Tyler will provide a quote for such clock replacements. Further, it is Client's responsibility is to promptly return the failed unit using the preaddressed and prepaid mailer and reusable container provided with the replacement clock. If Client fails to ship the defective clock within one (1) week of receiving replacement, Client shall be liable for the costs associated with the replacement clock. Replacements clocks will be shipped for overnight delivery. Orders placed before Noon Eastern time will ship the same day. Orders placed after



Quoted By: Karen Grosset
 Quote Expiration: 05/08/22
 Quote Name: City of Lakewood - ERP - Time and Attendance 525
 Quote Description: ExecuTime Time and Attendance 525

Sales Quotation For:

City of Lakewood
 5050 Clark Ave
 Lakewood CA 90712-2603
 Phone: +1 (562) 866-9771

Tyler Software and Related Services

Description	Qty	License	Hours	Module Total	Year One Maintenance
Human Resources Management					
ExecuTime Time & Attendance - Up to 750 Employees	1	\$ 25,378	176	\$ 25,378	\$ 5,076
ExecuTime Time & Attendance Import	1	\$ 5,145	0	\$ 5,145	\$ 1,029
ExecuTime Time & Attendance Mobile Access	1	\$ 5,075	0	\$ 5,075	\$ 1,015
TOTAL		\$ 35,598	176	\$ 35,598	\$ 7,120

Tyler Annual and Related Services

Description	QTY	Imp. Hours	Annual Fee
Recurring Services			
Tyler Disaster Recovery Service	1	0	\$ 1,780
Tyler System Management Services Contract	1	0	\$ 1,780
TOTAL:		0	\$ 3,560

Professional Services

Description	Quantity	Unit Price	Extended Price	Maintenance
Project Management	24	\$ 185	\$ 4,440	\$ 0
Remote Implementation	176	\$ 185	\$ 32,560	\$ 0
TOTAL			\$ 37,000	\$ 0

3rd Party Hardware, Software and Services

Description	Qty	Unit Price	Unit Discount	Total Price	Unit Maint/SaaS	Unit Maint/SaaS Discount	Total Maint/SaaS
Touchscreen 10: Proximity Reader (HID)	1	\$ 2,410	\$ 0	\$ 2,410	\$ 241	\$ 0	\$ 241
TOTAL				\$ 2,410			\$ 241

Summary**One Time Fees****Recurring Fees**

Total Tyler Software	\$ 35,598	\$ 7,120
Total Annual	\$ 0	\$ 3,560
Total Tyler Services	\$ 37,000	\$ 0
Total Third-Party Hardware, Software, Services	\$ 2,410	\$ 241
Summary Total	\$ 75,008	\$ 10,921
Contract Total	\$ 85,929	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

All Primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Standard Project Management responsibilities include project plan creation, initial stakeholder presentation, bi-weekly status calls, updating of project plan task statuses, and go-live planning activities.

Tyler's Disaster Recovery Service is calculated at 25% of the Munis annual maintenance. There is a \$5,000 minimum annual fee for Disaster Recovery service. The Disaster Recovery fees are applicable only to one Live Munis database and excludes all test and training databases. Disaster Recovery Services are invoiced annually in advance upon our receipt of your data. Disaster Recovery services will be provided in accordance with the terms of service for Disaster Recovery Services found here: <https://www.tylertech.com/terms/disaster-recovery-terms-of-service>.

Tyler System Management Services is calculated at 25% of the Munis annual maintenance. There is a \$2,500 minimum annual fee. Systems Management Services are invoiced when you sign this sales quotation and are provided in accordance with the terms of service for Tyler Systems Management found here: <https://www.tylertech.com/terms/tyler-systems-management-terms-of-service>.

If a Tyler client desires clocks that do not have direct connectivity back to the network server ExecuTime resides on, then a VPN device installation, to be provided at Tyler's then-current prices, will be needed for every location where a clock may reside. Clocks will be shipped upon receipt of a signed quote or addendum. Clock prices include Tyler instruction regarding clock configuration and connection to the ExecuTime software. Client is responsible for clock installation and connection to applicable network. If annual maintenance is purchased at the same time as the applicable clock

is purchased, the maintenance period for the clock will begin when the clocks is shipped. Annual maintenance will automatically renew upon the expiration date of the then current term (with each renewal being a "Renewal Term" unless either party indicates its decision to not renew at least thirty (30) days in advance of a Renewal Term. If annual maintenance for a clock is added at a future date, the annual maintenance term will begin upon receipt of a signed quote unless indicated otherwise. The maintenance plan includes direct replacement of the clock if it cannot be fixed through the standard helpdesk process provided, however, clocks that have been damaged due to neglect or misuse, vandalism, electrical surges, terrorism, or alterations done by other than a Tyler representative are not provided at no charge. Upon request, Tyler will provide a quote for such clock replacements. Further, it is Client's responsibility is to promptly return the failed unit using the preaddressed and prepaid mailer and reusable container provided with the replacement clock. If Client fails to ship the defective clock within one (1) week of receiving replacement, Client shall be liable for the costs associated with the replacement clock. Replacements clocks will be shipped for overnight delivery. Orders placed before Noon Eastern time will ship the same day. Orders placed after

SECTION VII
SAMPLE PROFESSIONAL SERVICES AGREEMENT

**CITY OF LAKEWOOD
PROFESSIONAL SERVICES AGREEMENT
WITH
(INSERT CONSULTANT NAME)**

This Professional Services Agreement ("Agreement") is made and effective as of (Insert Date) (the "Effective Date"), by and between the City of Lakewood, a California municipal corporation, (the "City") and (Insert Name), a (Insert Name of State) corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until the Services are completed, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the services described and set forth in Consultant's Proposal attached hereto as Exhibit A ("Services"), incorporated herein as though set forth in full.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of Consultant's ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant under this Agreement.

4. CITY MANAGEMENT

The City Manager or designee shall represent the City in all matters pertaining to the administration of this Agreement.

5. PAYMENT

- A. The City agrees to pay Consultant for Services satisfactorily performed in accordance with the fees set forth in Exhibit A, in an amount not to exceed \$200,000.
- B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager or designee. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to in writing by the City and

Consultant at the time the City's written authorization is given to Consultant for the performance of said services.

- C. Consultant will submit invoices monthly for actual Services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's Services or fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefor.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. The City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving written notice upon Consultant. Upon receipt of said notice, Consultant shall immediately cease all Services under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- B. In the event this Agreement is terminated pursuant to this section, the City shall pay to Consultant the actual value of the Services performed up to the time of termination, unless the City disputes any of the Services performed or fees. Upon termination of the Agreement pursuant to this section, Consultant will submit an invoice to the City pursuant to Section 5.

7. DEFAULT OF CONSULTANT

If the City determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, the City shall serve Consultant a written notice of the default. Consultant shall have seven (7) days after service of said notice to cure the default. In the event that Consultant fails to cure the default within such period of time or fails to present the City with a written plan for the diligent cure of default if such default cannot be cured within seven days, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement. The City shall also have the right to offset against the amount of any fees due to Consultant any costs incurred by the City as a result of Consultant's default.

8. OWNERSHIP OF DOCUMENTS

- A. Consultant shall maintain complete and accurate records with respect to tasks, costs, expenses, receipts, and other such information required by the City that relate to the performance of Services under this Agreement. Consultant shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily

accessible. Consultant shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts or copies therefrom as necessary; and shall allow inspection of all Services, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to the City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the Services under this Agreement.

9. INDEMNIFICATION AND DEFENSE

- A. Indemnity.

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City and any and all of its officials, officers, employees, agents, and/or volunteers ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, caused in whole or in part by the acts, errors, or omissions of Consultant, its officers, agents, employees, subcontractors, or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of Services under this Agreement.

- B. Duty to Defend.

In the event the City, its officials, officers, employees, agents, and/or volunteers are made a party to any claim, action, lawsuit, or other adversarial proceeding ("Action") arising from the performance of the Services under this Agreement, whether or not Consultant is named in such Action, and upon demand by the City, Consultant shall defend the City at Consultant's sole cost, or at the City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense.

- C. Payment by the City for Services is not a condition precedent to enforcement of this section. Consultant's duty to defend, indemnify, and hold harmless the City

shall not extend to the City's sole or active negligence. In the event of any dispute between Consultant and the City as to whether liability arises from the sole or active negligence of the City or its officials, officers, employees, agents, and/or volunteers, Consultant will be obligated to pay for the City's defense until such time as a final judgment has been entered adjudicating the City as solely or actively negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including, but not limited to, attorney's fees, expert fees and costs of litigation.

10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached hereto and made a part of this Agreement.

11. INDEPENDENT CONSULTANT

- A. Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither the City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, agents, subcontractors, or subconsultants, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, agents, subcontractors, or subconsultants are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.
- B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, the City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for the City. The City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent Consultant relationship created by this Agreement. Consultant further agrees to indemnify and hold the City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. The City shall have the right to offset against the amount of any fees due to Consultant under this Agreement as

a result of Consultant's failure to promptly pay to the City any reimbursement or indemnification arising under this paragraph.

- C. In the event that Consultant or any employee, agent, subcontractor, or subconsultant of Consultant providing Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, subcontractors, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.
- D. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, subcontractors, and subconsultants providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the City, including but not limited to eligibility to enroll in PERS as an employee of the City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City and its officials, officers, employees, and agents, shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with this Agreement or any Services to be conducted as a result of this Agreement. Violation of this section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any

Agreement or sub-agreement, or the proceeds thereof, for Services to be performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without the City's prior written authorization, unless the information is clearly public. Consultant, its officers, employees, agents, subcontractors, or subconsultants, shall not without written authorization from the City Manager or designee, or unless requested by the City's attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives the City notice of such court order or subpoena.
- B. Consultant shall promptly notify the City should Consultant, its officers, employees, agents, subcontractors, and/or subconsultants be served with any summons, complaint, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the Services performed hereunder or the City, unless the City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless Consultant is prohibited by law from informing the City of such Discovery. The City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless the City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, the City's right to review any such response does not imply or mean the right by the City to control, direct, or rewrite said response, or that the City has an obligation to review any such response or verifies any response it has reviewed.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mail by the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To the City: City of Lakewood
5050 Clark Avenue
Lakewood, CA 90712
Attention: City Manager

To Consultant: _____

Attention: _____

17. ASSIGNMENT

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Before retaining or contracting with any subcontractor or subconsultant for any services under this Agreement, Consultant shall provide the City with the identity of the proposed subcontractor or subconsultant, a copy of the proposed written contract between Consultant and such subcontractor or subconsultant which shall include and indemnity provision similar to the one provided herein and identifying the City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subcontractor or subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses required of it by law for the performance of the Services described in this Agreement.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. AMENDMENTS

Any amendments to this Agreement must be in writing and executed by the parties hereto, or their respective successors and assigns, in order to be valid.

22. ATTORNEYS' FEES

In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

23. CONSTRUCTION

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. WAIVER

The delay or failure of any party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

25. SEVERABILITY

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

27. AUTHORITY TO EXECUTE THIS AGREEMENT

The persons executing this Agreement on behalf of the parties warrant and represent that they have the authority to execute this Agreement on behalf of said parties and have the authority to bind the parties to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

[If Consultant is a corporation, two signatures are required: Signature 1 – the Chairperson of the Board, the President, or any Vice President; Signature 2 – the Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer (Corp. Code § 313).]

CITY OF LAKEWOOD

CONSULTANT

Mayor

ATTEST:

CONSULTANT

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments:	Exhibit A	Consultant's Proposal
	Exhibit B	Insurance Requirements

EXHIBIT A
CONSULTANT'S PROPOSAL

EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of the City, and prior to commencement of Services, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City. If the Consultant maintains higher limits than the minimum limits shown below, the City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Umbrella or excess liability insurance. Consultant shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. Consultant shall provide certificates of insurance to the City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, or Consultant's agents, representatives, employees, subcontractors, or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

The City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Consultant or the City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, the City may immediately terminate this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors or subconsultants.

Enforcement of Agreement provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Agreement are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that the City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Consultant agrees to ensure that its subcontractors or subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with Consultants, subcontractors, subconsultants, and others engaged in the Services will be submitted to the City review.

The City's right to revise specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, the City and Consultant may

renegotiate Consultant's compensation or come to some other agreement to address the additional cost.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.