

REQUEST FOR STATEMENT OF QUALIFICATIONS
5th Street Bicycle & Pedestrian Project
Deadline: 2:00 pm, November 2nd, 2020

Purpose

The City of Mukilteo is requesting qualifications (RFQ) from qualified professionals or firms to provide professional services for the public outreach, design, engineering and permitting of the 5th Street Bicycle & Pedestrian Project, with the option for grant application support and / or construction management and inspection services. The project will provide pedestrians and bicyclists new intuitive access modes on 5th St / Mukilteo Blvd.

The consultant will be expected to work with the public to refine a design approach, obtain permits, and prepare contract plans, specifications, and estimates (PS&E) of the proposed improvements.

Background

The project area is 5th St. / Mukilteo Blvd from Lincoln Ave. east to the City limits, about a mile in length. The western half of the project area is located in the heart of Old Town. Primarily residential, this section has a speed limit of 25 mph. The eastern half of the project area continues to be residential with entrances to a dog park and the Japanese Gulch Trail system. This section has a speed limit of 35 mph.



The 5th St. / Mukilteo Blvd. improvements connect into [the City of Everett's Edgewater Bridge Replacement project](#) on the east (tentative 2022 /23 construction) and the design will need to be coordinated with Everett's design to ensure a smooth transition between projects.

The street is a Principal Arterial connecting the City of Mukilteo with the City of Everett. It has the highest average daily traffic on City owned streets at 5,100 vehicles per day



(Feb. 2020). And serves Everett Transit Bus Route #18. Currently, there are two pedestrian crossings, but no dedicated bicycle or pedestrian facilities. The crossing at Loveland Ave is marked and signed. The crossing at Cornelia Ave is marked and has a pedestrian activated Rectangular Rapid Flashing Beacon.

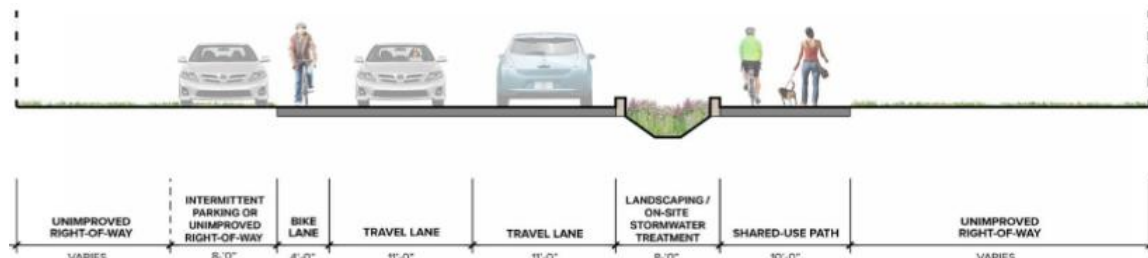
The Right-of Way width varies, but is typically around 80 feet. Paved or gravel on-street parking is present for most of the project length.

As a main travel way, 5th St. / Mukilteo Blvd. has had speeding complaints dating back to the early 1900's. The City has received a number of traffic calming requests this year. A speed study was conducted in February on the western half. The 85th percentile speed was 41 mph, in this 35 mph zone. A speed study on the eastern half is planned for later this fall.

Public outreach will be key to finding a balance between competing needs and defining a successful multimodal project.

This project was identified as a priority project in [Mukilteo's Bike-Transit-Walk \(BTW\) plan](#), to improve 5th St. / Mukilteo Blvd. from Lincoln Ave. to the eastern city limits by adding pedestrian and bicycle facilities. (excerpts are provided in the RFQ Appendix.)

Initial concepts proposed in the BTW plan utilized the entire City right of way, however residents opposed this due to several existing homes and structures that are located close to, and in some instances, encroaching into the right-of-way. During a 2016 public meeting, several alternatives were discussed, and the preferred alternative largely stays within the existing roadway width (typically around 40 feet). In the BTW, planning level construction costs for this project were estimated at \$2.9 million.



2016 BTW Preferred Alternative (Concept)

The City of Mukilteo received a grant from the Sound Transit System Access Program earlier this year for the design of the 5th St. Bicycle and Pedestrian Improvements project. This program is intended to “fund such projects as safe sidewalks and protected bike lanes, shared use paths, improved bus-rail integration and improved pick-up and drop-off areas that provide convenient access so that more people can use Sound Transit services.”



Currently funding for the construction of this project is on a list of projects that are recommended for further analysis as part of the [Sound Transit Edmonds and Mukilteo Parking and Access Improvement program](#). Sound Transit is currently going through a realignment process which is anticipated to be complete in July 2021. While this is underway the evaluations for the Edmonds and Mukilteo projects is likely to be on pause.

Project Description

The project will provide pedestrians and bicyclists new intuitive access modes on 5th St. / Mukilteo Blvd. by adding a pedestrian and bicycle facilities. These new multi-modal facilities will provide a comfortable and safe route for residents to utilize 5th St. / Mukilteo Blvd. to reach the Sound Transit Mukilteo Station as well as other sites along the Mukilteo Waterfront, such as the new Washington State Ferries Mukilteo Multimodal Terminal, the new Waterfront Promenade and Lighthouse Park.

This project achieves the following goals:

- Ensure safe and adequate crossings.
- Eliminate gaps in the pedestrian network.
- Eliminate gaps in the bicycling network.
- Increase multimodal options.

The project is approximately one mile in length and will primarily stay within existing right-of-way. The design may include intermittent on-street parking and on-site stormwater management.

Scope of Work

The consultant will conduct public outreach, complete the entire design, develop preliminary and final contract plans, specifications, and estimates (PS&E), and prepare and obtain permitting.

The consultant, at the option of the City, may be contracted to support the City in grant applications for construction funding and / or to provide construction management and inspection support services.



The Scope of Work will include, at a minimum, the following elements:

1. Project Management
2. Public Outreach: Engage the public to gather input, ideas, and feedback influencing the design. Given the current social distancing environment, it is anticipated that Public Outreach will be virtual.
3. Permitting: Prepare, complete, and obtain necessary permits
 - Environmental Permitting and Documentation Support (SEPA)
 - ROW permit
 - Stormwater permit
 - Any other permits
 - i. Possibly the City of Everett due to the proximity of the project to City Limits
4. Right of Way: Temporary Construction Easements (if required)
5. Engineering and Design
 - Surveying and Base-mapping
 - Utility Coordination
 - i. Utility relocation is not anticipated
 - ii. Coordination with the City of Everett is expected due to the proximity of the project to City Limits
 - Drainage Report
 - Plans Specifications & Estimate with review at 60%, 90% and 100%
 - Ad-Ready, Final Construction Documents
6. Bidding Support
7. Grant Application Support for Construction Funds (Optional)
8. Construction Management & Inspection (Optional)

Deliverables will include, at a minimum:

- Public Outreach Materials
- Survey / base-map data
- Drainage Report
- 60%, 90% and 100% PS&E
- Completed permits
- Ad-Ready, Final Construction Documents
- Documents needed to support a grant application for construction funds (optional)



The selected firm will need to have the resources that will enable it to complete tasks quickly and be extremely responsive. The firm will need to be able to accomplish this work independent of City staff support, other than oversight by the City's project manager. The City's project manager will lead the overall process and will be the nexus through which all public involvement and agency coordination occurs.

Schedule

The following schedule, except the deadline for the RFQ Submittals, is tentative and may be changed based on the number of responses received.

Date	Task
November 2, 2020: 2:00 PM	Deadline for RFQ submittals
November 3 – November 12	Review of responses
November 18 – November 20	Interviews
November 20 – December 18	Selection of firm and Negotiation of contract
January 4, 2021	City Council award of contract
January 11, 2021	Notice to Proceed

Procedures for Submittal

If interested in responding to this RFQ, submit an email to Connie Bowers, Assistant City Engineer, at cbowers@mukilteowa.gov, no later than **2:00 pm on November 2nd, 2020** indicating your interest in the project. Emails shall include:

1. Email Body Text:
 - a. Firm name;
 - b. Contact Information;
 - c. A link to your website;
 - d. A list of any firms which you may be teaming with;
 - i. Links to their websites
2. Email Attachments:
 - a. A cover letter that briefly describes your interest in the project (limited to one page, minimum 10-point font).
 - b. The firms expected approach to the project (limited to 2 pages, minimum 10-point font)
 - c. A list, with a short description, of at least three projects which closely relate to the above described project, including references (limited to 3 pages, minimum 10-point font)
 - d. Key personnel expected to be assigned to this project; availability, resumes, and references (limited to 4 pages, minimum 10-point font)

For your records, the City will provide a confirmation email confirming receipt of your interest in the proposal. Emails received after **2:00 pm on November 2nd**, and all hard/paper copy submittals will be disregarded.



Selection Process

A committee of City personnel will evaluate and rate the proposals using the following criteria:

1. Consultant Interest
2. Firms' Project Approach
3. Consultant Experience with similar projects
4. Project Manager/Team Members availability, ability, experience, and reputation

Following evaluation of the RFQ Responses, the City will select up to three firms for virtual interviews.

Contract negotiations will take place with the top-rated consultant. If negotiations are unsuccessful, the City reserves the right to terminate negotiations and open discussion with the next-highest rated consultant. This process will continue until successful contracts are negotiated or the City terminates the process.

Inquiries

Direct all inquiries regarding this request for qualifications to Connie Bowers, P.E., Assistant City Engineer at cbowers@mukilteowa.gov or 425.263-8080.

Americans with Disabilities Act (ADA) Information

The City of Mukilteo in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Carol Moore at cmoore@mukilteowa.gov or by calling 425-263-8005.

Equal Employment Opportunity

The City of Mukilteo in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.

The City of Mukilteo encourages disadvantaged, minority, and women owned consultant firms to apply.

Reservations

The City of Mukilteo reserves the right to reject any and all RFQ Responses and to waive irregularities and informalities in the submittal and evaluation process. This solicitation for Consultant Services does not obligate the City of Mukilteo to pay any costs incurred by respondents in the preparation and submission of an RFQ Response. This solicitation does not obligate the City of Mukilteo to accept or contract for any expressed or implied services. Furthermore, the City of Mukilteo reserves the right to award the contract to the next most qualified Consultant if the selected Consultant does not execute a contract within thirty (30) days after the award of the proposal.

Appendix - Supplemental Material

1. Google Street View available – [this link starts on SR 525 at the turn-off for 5th St.](#)
2. [BTW Plan \(adopted March 2017\)](#) – Excerpts below and on page 8

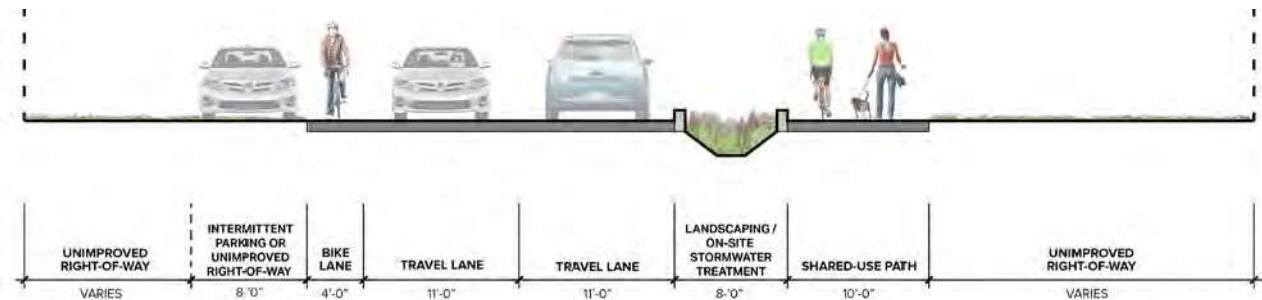
BTW Project Cost Estimate – planning level

34 5th Street Bike & Ped Improvements Int SR 525 to City Limits			
Improvement Length	10000	Capacity Project:	Yes
Preliminary Hard Costs		Safe-Route-To-School:	No
Reference:	City Staff	Greenway:	Yes
Additional Facilities	Per 100ft		
Bike Markings - Low	\$	539.00	\$ 53,900.00
10' Asphalt Path - Low Signage	\$	18,500.00	\$ 462,500.00
2 Lane Resurfacing	\$	8,000.00	\$ 800,000.00
Landscaping	\$	800.00	\$ 80,000.00
Total Hard Costs		\$	1,396,400.00
Soft Costs		36%	\$ 502,704.00
Sub-Total		\$	1,899,104.00
Additional Contingency		20%	\$ 379,820.80
Sales Tax		10%	\$ 227,892.48
Inflation at 3% Annual		15.92%	\$ 399,085.31
*not all facilities run length of improvement area		2021 Total	\$ 2,905,902.59

3. City Standard Contract Template Page 9 - 20

34. 5th Street - Priority Score: 64 --- Estimated Cost \$2,500,000

Throughout the BTW Plan Public Outreach, the consideration for implementation included an interim solution and a future final build solution, however Staff identified an alternative to merge the benefits of interim solutions and final build while controlling costs to create a feasible option. This alternative became known as 'Alternative 3'. Alternative 3 identifies opportunity for parking, one bike lane, and shared use path. The principle with the alternative is to implement the desired facilities within the existing 'improved area' of approximately 44 feet. One the challenges to address is on-street parking, and this interim design proposes to transfer the use of existing on-street parking into intermittent parking as needed on both sides of the roadway. The intent of intermittent parking is to provide high flexibility to meet true parking demands while minimizing pavement. As the properties along the north side of 5th Street have access to either a garage or alley parking, the final design is expected to minimize on-street parking. With the proposed design, on-site stormwater management may be required and to meet this potential a flexible space for a bioswale is identified or could also be used as landscaping and parking. Alternative 3 still provides flexibility to meet changing demands. This flexibility provides the opportunity for additional public input and at this stage is a conceptual design only for planning, and cost estimating purposes. *The City will continue public outreach efforts with the residents on 5th Street to address any adverse impacts to landscaping.*



EXISTING



ALTERNATIVE 3

- EASY WINS -

- Roadway east of the Dog Park can be implemented with a re-stripping project.
- Identify future water and waste water capital projects that require significant work within the right-of-way for project pairing.
- Minimize use of physical barriers (curbs) to lower costs of implementing (project costs) and maintaining (future costs) ADA facilities.

**CITY OF MUKILTEO
CONSULTANT AGREEMENT**

This Agreement is entered into for the provision of consultant services to the City of Mukilteo for the following Project:

Project Title: INSERT NAME OF PROJECT

Work Description: See Attachment A - Scope of Work

Parties to the Agreement

Consultant:	City:
Name	City of Mukilteo
Address	11930 Cyrus Way Mukilteo, WA 98275
Project Manager:	Project Manager:
Phone:	Phone: (425) 263-
Fax:	Fax: (425) 212-2068
E-mail:	E-mail:
Type of Agreement (Check One):	Original Contract Time:
<input type="checkbox"/> Lump Sum	<input type="checkbox"/> ___ Calendar Days
<input checked="" type="checkbox"/> Time and Expense, Not to Exceed a Maximum Amount	<input checked="" type="checkbox"/> Completion on or before <u>Date</u>
Original Agreement Amount:	<input type="checkbox"/> Federal Funding Requirements Apply
Actual Cost \$	<input type="checkbox"/> State Funding Requirements Apply
Allowance \$ _____	<input checked="" type="checkbox"/> N/A
Total Not to Exceed \$<u>XXXXXX.00</u>	

CITY OF MUKILTEO CONSULTANT AGREEMENT

THIS AGREEMENT is made by and between the City of Mukilteo, a municipal corporation of the state of Washington (the “City”), and Name of Firm, a _____ organized under the laws of Washington and licensed to do business in Washington (the “Consultant”).

WHEREAS, the City desires to accomplish the above-referenced project (the “Project”); and

WHEREAS, the City does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a Consultant to provide the necessary services for the Project; and

WHEREAS, the Consultant represents that it is in compliance with Washington State statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting Services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance set forth below, the parties agree as follows:

1. SCOPE OF WORK. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as Attachment A and incorporated herein by this reference. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement. All aspects of coordination of the work of this Agreement with outside agencies, groups or individuals shall receive advance approval by the City. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the City.

2. TIME FOR BEGINNING AND COMPLETION. The Consultant shall not begin any work under this Agreement until authorized in writing by the City. The Consultant shall complete all work and submit all deliverables required by this Agreement by the completion date shown in the heading of this Agreement. The completion time shall not be extended because of delays attributable to the Consultant, but may be extended by the City in the event of a delay attributable to the City, or because of unavoidable delays caused by an Act of God or governmental actions or other conditions beyond the control of the Consultant. A supplemental agreement issued by the City is required to extend the completion time.

3. PAYMENT

A. General. The Consultant will be paid by the City for completed work and services rendered under this Agreement as set forth below. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Attachment A. A summary of the Consultant’s cost break down, or lump sum cost if applicable, by work task is Consultant Agreement over \$30,000

included in Attachment A, including the computation of overhead costs and fixed fee if applicable.

B. Billings and Payment Processing. The Consultant may invoice the City not more than once per calendar month. Invoices shall be inclusive of all work performed on this Project. Invoices shall detail the work performed and services rendered on a task basis as established in Attachment A. Invoices shall be accompanied by a progress report as required under Section 4, covering the period for which the invoice is submitted. The City will pay such invoices within 30 days of submittal, unless the City gives notice that the invoice is in dispute. In such event, the City will pay the amount not in dispute and will withhold payment on all disputed amounts until such dispute(s) are resolved by the parties. The cumulative total of the monthly progress payments shall not exceed 90% of the "Original Agreement Amount" listed in the heading of this Agreement.

C. Maximum Total Amount Payable. The Maximum Total Amount Payable by the City to the Consultant shall not exceed the amount shown in the heading of this Agreement under "Original Agreement Amount". The Maximum Total Amount may be adjusted by any mutually agreed change order – see Section 10 – "Changes in Work".

D. Final Payment. A final payment of 10% of the Maximum Total Amount Payable due the Consultant will be made promptly upon verification by the City after completion of all work, contingent upon receipt of all reports and other related documents which are required to be furnished under this Agreement. Acceptance of such final payment by the Consultant shall constitute a release of all claims for payment which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

E. It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the Consultant, the Consultant agrees to refund such overpayment to the City within ninety (90) days of notice of any such overpayment. Such refund shall not constitute a waiver by the Consultant for any claims relating to the validity of a finding by the City of overpayment.

4. PROGRESS REPORTS. The Consultant shall provide a progress report upon the completion of each task as described in Attachment A, in a form approved by the City that will outline in written and graphical form the various tasks and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

5. RELATIONSHIP OF THE PARTIES.

A. The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona

bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warrant, the City shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission percentage, brokerage fee, gift, or contingent fee.

B. Any and all employees of the Consultant or other persons while engaged in the performance of any work or services required of the Consultant under this Agreement shall be considered employees of the Consultant only and not of the City, and any and all claims that may arise under any worker's compensation act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Consultant's employees or other persons while so engaged on any of the work or services provided on behalf of the Consultant to be rendered herein, shall be the sole obligation and responsibility of the Consultant.

C. The Consultant is an independent contractor for the performance of services under this Agreement. The City shall not be liable for, nor obligated to pay to the Consultant (or to any employee of the Consultant), any sick leave, vacation pay, overtime or any other benefit applicable to employees of the City, nor to pay or deduct any social security, income tax, or other tax from the payments made to the Consultant which may arise as an incident of the Consultant performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Consultant.

D. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof.

E. The Consultant shall not engage, on a full or part time basis, or other basis, during the period of this Agreement, any professional or technical personnel who are, or have been, at any time during the period of this Agreement, in the employ of the City, except regularly retired employees, without written consent of the City.

6. NONDISCRIMINATION. During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest agrees as follows:

A. The Consultant agrees not to discriminate against any client, employee or applicant for employment, or for services because of race, creed, color, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rates of pay or other forms of compensation, selection for training, rendition of services. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and further that the Consultant shall be barred from performing any services for the City now or in the future unless

a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

B. The Consultant shall comply with all other applicable regulations relative to nondiscrimination, including but not limited to the American Disabilities Act of 1992, as amended.

C. The Consultant, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, creed, color, sex, sexual orientation, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by applicable regulations.

D. Solicitations for Subconsultants and Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, creed, color, sex, sexual orientation, age, marital status, national origin and handicap.

E. Information and Reports. The Consultant shall provide all information and reports required by regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the City and shall set forth what efforts it has made to obtain the information.

F. Unfair Employment Practices. The Consultant shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibits unfair employment practices.

G. Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as it may determine to be appropriate, including, but not limited to: (i) withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or (ii) cancellation, termination or suspension of the Agreement, in whole or in part.

H. Incorporation of Provisions. The Consultant shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment unless exempt by the applicable regulations. The Consultant shall take such action with respect to any subconsultant or procurement as the City may reasonably direct as a means of enforcing such provisions including sanctions for noncompliance.

7. INDEMNIFICATION/HOLD HARMLESS.

A. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees or volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

C. The provisions of this section shall survive the expiration or termination of this Agreement.

8. INSURANCE. The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees or subcontractors. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below or a State of Washington approved equivalent, subject to review by the City's Insurance Authority:

- (1) Automotive Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Service Office (ISO) form CA00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- (2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
- (3) Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(4) Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

- (1) Automotive Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- (3) Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

- (1) The Consultant's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- (2) The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by the Consultant or Insurance Company, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers listed as an authorized insurance company with the Washington State Insurance Commissioner and with a current A.M. Best rating not less than A:VII.

E. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirement of the Consultant within fourteen (14) days of the execution of the Contract by the City, or prior to commencement of the work, whichever should occur first.

F. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation within two business days of its receipt of such notice.

G. Failure to Maintain Insurance. Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the Agreement, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

9. TERMINATION OF AGREEMENT. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be provided to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on the part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so. Payment for any part of the work shall not constitute a waiver by the City of any remedies of any type it may have against the Consultant for any breach of this Agreement by the Consultant, or for failure of the Consultant to perform work required of it by the City.

10. CHANGES IN WORK.

A. The Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct errors appearing therein, when required to do so by the City, without additional compensation. Should the City find it desirable for its own purposes to have previously satisfactorily completed work, or parts thereof, changed or revised, the Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as provided in Section 11.

B. Should the City find it desirable for its own purposes to modify portions of the agreed upon scope of work, the City shall inform the Consultant of such change(s). If the City deletes portions of the agreed upon scope of work, the contract amount will be adjusted accordingly to reflect the savings for work not yet performed. If the City increases the scope of work, the Consultant will submit for the City's approval a proposal for the increased cost necessary to complete the additional work. No additional work shall start without the City's approval of cost associated with the increased work.

C. If the Consultant has previously been given authorization to proceed on the portion(s) to be deleted, the City's notice of intent to delete the portion(s) shall constitute notice to cease work on those portions to be deleted. If the Consultant has begun work on a portion of the work to be deleted, the City will reimburse the Consultant in accordance with the formula for a no-fault termination under Section 9 as applied solely to the portions to be deleted.

D. The City has provided the Consultant with a budget for the project and has requested that the Consultant develop a Scope of Work that will not exceed this budget. The Consultant understands that the City is relying upon the Consultant's expertise to develop a Scope of Work that fits the budget. The City and Consultant will work together to bring the project in, on or under budget.

11. EXTRA WORK.

A. The City may, at any time, by written order, make changes within the general scope of the Agreement for the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this Agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the Agreement, the City will make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and will modify the Agreement accordingly.

B. The Consultant shall submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the City decides that the facts justify it, the City may receive and act upon a claim submitted before final payment of the Agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Consultant from proceeding with the Agreement as changed.

D. Notwithstanding the terms and conditions of paragraph A above, the maximum amount payable for work performed under this Agreement shall not be increased or considered to be increased except by written supplement to this Agreement.

12. OWNERSHIP AND USE OF WORK PRODUCT. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefor. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant. All reports, materials, and other data furnished to the Consultant by the City shall be returned.

13. RECORDS.

A. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

B. Consultant acknowledges that the City is an agency governed by the public records disclosure requirements set forth in chapter 42.56 RCW. Consultant shall fully cooperate with and assist the City with respect to any request for public records received by the City concerning any public records generated, produced, created and/or possessed by Consultant

and related to the services performed under this Agreement. Upon written demand by the City, the Consultant shall furnish the City with full and complete copies of any such records within ten business days. Consultant's failure to timely provide such records upon demand shall be deemed a material breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, the Consultant shall indemnify and hold harmless the City as set forth in Section 7. For purposes of this section, the terms "public records" and "agency" shall have the same meaning as defined by chapter 42.56 RCW, as construed by Washington courts.

C. The provisions of this section shall survive the expiration or termination of this Agreement.

14. FEDERAL AND STATE REVIEW. When federal or state grant funds or loans are utilized for any part of this Agreement, the appropriate federal and state agencies shall have the right to participate in the review or examination of the work in progress.

15. DISPUTES.

A. Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the Consultant and the City shall be referred for determination to the City Administrator, whose decision in the matter shall be final and binding, provided, however, that if litigation is brought challenging the Administrator's decision, that decision shall be subject to de novo judicial review.

B. In the event the parties cannot agree upon a resolution of a dispute, the same shall be settled by mediation/arbitration pursuant to chapter 7.04 RCW except as herein modified. Such mediation/arbitration shall be before one disinterested mediator/arbitrator, if one can be agreed upon, otherwise before three disinterested arbitrators, one named by city, one by Consultant, and one by the two thus chosen. If all arbitrators have not been appointed within ten (10) days after written notice of demand for arbitration is given by one party to the other, then either party may apply to the Snohomish County Superior Court, upon not less than (5) days written notice to the other, for appointment of the necessary arbitrators remaining to be appointed, and the judicial appointment shall be binding and final. The arbitrator or arbitrators may grant injunctions or other relief in such controversy or claims. The decision of the arbitrator or arbitrators shall be final, conclusive and binding on the parties and a judgment may be obtained in any court having jurisdiction.

16. NOTICES. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail. Notices to the Consultant shall be sent to the Consultant's President at the address set forth in the header of this Agreement. Notices to the City shall be sent to the City's Project Manager at the address set forth in the header of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

17. DESIGNATED REPRESENTATIVES. The individuals identified as Project Managers in the header of this Agreement shall be the designated representatives of the parties to this Agreement. The City's Project Manager will coordinate the City's efforts relating to the work of the Consultant; provide project information to the Consultant; review progress and content of the Consultant's work in order to ensure that it meets the requirements of this Agreement; review and monitor the quality and quantity of such work; and review and process invoices from the Consultant for payment.

18. COMPLIANCE WITH LAW. The Consultant shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work to be done under this Agreement.

19. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington. Any legal proceedings shall be brought in the Superior Court of Snohomish County.

20. NON-WAIVER. Payment for any part of the work or services by the City shall not constitute a waiver by the City of any remedies of any type it may have against the Consultant for any breach of this Agreement by the Consultant, or for failure of the Consultant to perform work required of it under this Agreement. Waiver of any right or entitlement under this Agreement by the City shall not constitute waiver of any other right or entitlement.

21. SUBCONTRACTING. The Consultant shall not subcontract for the performance of any work under this Agreement without prior written permission of the City. No permission for subcontracting shall create, between the City and subconsultant, any contract or any other relationship.

22. ENTIRE AGREEMENT. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to only upon the mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year written below, effective upon full execution by the parties.

NAME OF FIRM

CITY OF MUKILTEO

By: Name of Signatory
Title: Title of Person Signing
Date: _____

Jennifer Gregerson or Steve Powers
Mayor **City Administrator**
Date: _____

ATTEST/AUTHENTICATED:

Carol Moore, City Clerk

Authorized by City Council Action:
Agenda Bill # _____
Date: _____

APPROVED AS TO FORM:
Ogden Murphy Wallace
Office of the City Attorney

Attachments: *Attachment A - Scope of Work, Fee and Schedule*