



REQUEST FOR PROPOSALS
Council Chambers Audio/Visual Upgrade

Deadline: September 15, 2021 at 3:00PM exactly (PST)

Purpose

The City of Mukilteo is requesting proposals from qualified vendors to modernize the audio/visual system for the City Council Chambers.

Background

The Council Chambers, located in City Hall at 11930 Cyrus Way, Mukilteo, WA, 98275, provides a facility for not only public City Council meetings but also other commission and committee meetings as well as other public advisory board and internal meetings. Meetings are streaming video (both live and recorded) on Facebook, Zoom, YouTube, the City's website, and through our agenda management platform, Granicus. This project is to update the audiovisual equipment and user interface with more modern, affordable, and durable equipment in the Council Chambers and broadcast meetings with a hybrid system, allowing for virtual viewing and participation. Also, consider any ancillary rooms or areas into which the meetings are broadcast for staff and overflow crowds.

The Council Chamber and related control systems will be upgraded, where needed, to utilize current, reliable, and supportable technology to allow the City to conduct Council and Committee meetings and other presentations requiring internal AV support. The existing audio components will be retained, where possible, and integrated into the new AV system as the audio components are relatively new. The new Council Chamber AV system will include new audio and video recording, integration of multiple cameras, camera system should be automated, switching from one speaker to the next without clerk assistance, microphones, video controllers and other equipment, and presentation distribution to online streaming. An integrated control system will be used to allow easy and intuitive user control of the system. The control system provides full system control, including selection and control of source devices, presentation switching, and audio control for multiple users, for example, at the Mayor's seat and at the Clerk's desk.

The City desires to fully replace the existing system with a modern, digital presentation system that provides clear audio and enhanced presentation viewing in all areas of the Council Chambers. All of the technology shall be digital and IP- based, and interoperable. The system as installed will support at least full HD capability (1920x1080 Resolution). The installed infrastructure should be able to accommodate future presentation upgrades of at least 4K resolution. To the extent that existing equipment can be retained and integrated into an overall AV solution, the contractor should strive to do so where possible.

The goals of the audio/visual upgrade are the following;

1. Improved video display and recording capabilities.
2. Improved audio capabilities.

3. Improved reliability and energy efficiency.
4. Install and implement designed audio, video, and sound system solution into the existing City Council Chambers.
5. Improved ease of use for the City Clerk and Mayor for conducting meetings, recording and online streaming of meetings, integration of in-person and online meeting participants for hybrid meetings.
6. Integration and ease of use with streaming and archival software, with both current and other named vendors.

Audio equipment will need to integrate with cameras to capture clearer sound than what is currently possible with the existing equipment. New or additional cabling may need to be installed where no cables currently exist.

The system needs to be as hands-free as possible. Our goal is a system that can manage audio and video input levels without significant staff intervention.

Project Description

The City is seeking a qualified vendor to design, develop and install upgraded audio, video, and sound system equipment in the City Council Chambers. This Request is for two areas: immediate replacement of the existing system where needed, and as-needed repair and routine maintenance of the new audio system.

Scope of Work

The Scope of Work for this engagement will be to design and install, or modify if necessary, the desk, podium, and dais areas to accommodate the provided equipment and comfortably accommodate the people needed to use it, configure and test the new system within the calendar timeframe defined herein while keeping as much of the existing equipment, facilities and furniture infrastructure intact as possible.

Contractor will verify the AV system, electrical requirements, conduit, heat load data, and interior design considerations unique to the audiovisual system, which have been incorporated in the functional specification and equipment design

Specific deliverable requirements requested by the City as part of this Scope of Work include the following:

- Provide a single line drawing of existing and new audio, video, and sound systems to the City. Detailed system fabrication, interface, and cabling drawings will be prepared in AutoCAD format. PDF or other standard graphic files will also be provided of the overall design for ease of review.
- Provide a listing of all labor and materials to install the complete audio, video, and sound systems. Supply of all required equipment to provide a turnkey system. Supply of interface and mounting components - AV Contractor will supply interface and mounting components and cabling, connectors, and installation materials.
- Provide testing and adjustments after the installation of the new audio, video, and sound system. Assist the City with programming and commissioning the new systems after installation. Once the site is verified as completely prepared and acceptable for receipt of the systems, the AV components and equipment will be transported to the site and

installed. Complete system installation to supporting infrastructure (conduit, electrical, cabling, etc.) will be performed by AV Contractor during the timeframe designated for Council Chambers closure. After all AV systems are installed, final testing and adjustments will be made to ensure compliance with the established performance criteria. The City will be present to observe and sign off on the testing completion.

- Provide training for the new systems after installation for staff and for elected and appointed officials. Once all systems are installed, and final testing and adjustments have been completed, City staff operational training will be performed. An allowance of sixteen (16) hours of operational training shall be included. Additional operational training and manufacturer-specific operational training may be provided upon request at an additional charge. Following the User Training, the City will perform a complete mock meeting run through. If successful, a System Acceptance Certificate will be executed and final payment authorized. Failure of any component during the System Acceptance will result in withholding of final payment and may invoke Liquidated Damages if the system cannot be used for the next scheduled public meeting.
- Provide the City with support for manufacturer warranties for service during the warranty period, and also provide the City with service support labor rates. As needed, repair and routine maintenance of the new audio system. Repair Costs Detail costs must include but are not limited to trip charges, hourly rates, equipment replacement costs for hardware, etc. Include how the selected firm will handle all costs over the term of the Contract. For example, equipment costs might be cost plus some reasonable markup for handling and overhead. Or perhaps the current cost-plus x% annual increase.
- Quick Response Support. The City's audio system is critical and requires a reliable company to provide as-needed support in a timely manner. Please detail your company's commitment to providing a quick response in the event of a significant system failure occurring during a City Public meeting. Include response time that can be guaranteed and the cost for this level of support.
- Escalation Procedure. The City will need a formalized escalation procedure with the selected firm to include cell phone numbers for management personnel. This audio system is essential to support the City's official meetings. The City would use those numbers only in the event that our customer service level expectations were not being met. The City does not need the actual contact information as part of this submittal; only an outline of the escalation procedure would be and a commitment to provide the info as part of the contract negotiation process.
- Provide all operating manuals for the new equipment installed. Formal documentation of the system must be provided. This must include, but is not limited to:
 - Wiring paths and diagrams including a component to component wiring
 - Default system settings
 - All component manuals
- Contractor will provide one system engineer on-site for the first live City Council meeting that will utilize the new system.

A meeting schedule will be provided for all meetings and training activities. The Council Chamber room must be clean and left in a usable condition for these events during any construction and/or installation period.

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 City involvement and coordination occurs.

Schedule

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

Date	Task
September 1, 2021	Mandatory walk-through
September 8, 2021	Deadline for RFP questions and comments
September 15, 2021: 3:00 PM	Deadline for RFP submittals
September 22, 2021	Review of responses complete
September 23 – 29, 2021	Selection of firm and Negotiation of contract
October 18, 2021	City Council award of contract
October 19, 2021	Notice to Proceed

Submittal Requirements

If you, or your team, wish to be considered for this RFP, you must submit all response materials to Shawn Hunstock, Finance Director, at 11930 Cyrus Way, Mukilteo, WA 98275. Submittals shall be completed electronically, by 3:00pm on September 15, 2021, by emailing shunstock@mukilteowa.gov.

For your records, the City will provide a confirmation email confirming receipt of your interest in the proposal.

Proposals are due **no later than 3:00 pm on September 15, 2021.**

Complete proposals shall, at a minimum, consist of the following:

- A. Letter of Intent
 - i. Include an introductory letter expressing interest in the project. The letter should include the name of the firm, contact person, email address, mailing address, telephone number and must be signed by a person authorized to bind the firm.
- B. The City will use email exclusively for information requests and RFP changes. NOTE: the exception to email is to request an RFP. RFP's CANNOT BE SUBMITTED BY EMAIL.
- C. Proposal Introduction, Background, and Objectives Statement
- D. Qualifications and Experience
 - i. Principal Individuals and Firm
 - ii. Any Sub-consultants
 - iii. Comparable Projects. Provide project descriptions for up to five recent projects similar in nature and size to the proposed project, including the type of entity, start and completion dates, and measures used to indicate quality and successful project completion.
 - iv. Provide client reference names and phone numbers. Provide any background information on the firm's size, capability, and location that may be beneficial.

- E. Cost Proposal.
- i. Provide a cost proposal to perform the scope of Work. Include estimated person- hours, labor costs, and expenses for each task listed in the scope of Work. The proposed costs should include any applicable travel and/or other expenses. Travel costs must be included in the cost proposal. Travel costs will only be paid through reimbursements.
 - ii. Clearly describe any deviation from the listed scope of Work that would significantly affect costs. Separate the cost of any proposed optional services from the cost of services requested. The format for the cost proposal is to be selected by the consultant.
 - iii. Include a listing of hourly rates for all employee classifications anticipated to work on the project, as well as rates for non-labor direct expenses. Include similar information for any major sub-consultants. The listed rates will be used in the preparation of any future change orders.
- F. Completely address each item in Project Objectives – Scope of Work. Provide a statement of the services to be provided, including a detailed explanation of how the services are provided and managed. Indicate how important each service is to successful project completion. Identify the expected involvement by City staff for each major activity in the project. A project schedule should be included in this Section.
- G. Three professional references. These references should be current customers of the prospective firm with at least four years of ongoing professional relationships.
- H. Supplemental Attachments listed below.
- I. Bidder's Checklist.

RFP Evaluation and Selection Criteria

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

City of Mukilteo Evaluator Rating Form			
Vendor:	Evaluator:		
FACTOR	Weight	Score	Weighted Score
1. QUALIFICATIONS OF COMPANY/CONSULTANT			
Relevant Experience of the Firm.	10%		
Reputation of the Firm. (Based on references for similar successful projects)	10%		
Capacity of the Firm (Depth of available resources, fiscal stability, and history of similarly sized projects)	10%		
2. TECHNICAL APPROACH			
Responsiveness following the instructions of the RFP process	10%		
Schedule validity or applicability and penalty incentives	10%		
Presentation of completed model in the RFP Response	10%		
Design	10%		
SUB-TOTAL	70%		
3. COST FOR SERVICE			
Initial Cost	20%		
Cost of Maintenance and service calls	10%		
SUB-TOTAL	30%		
TOTAL	100%		
SCORE: 0=Unacceptable 1=Poor 2=Fair 3=Good 4=Excellent			

Upon completion of the evaluations, the City will determine the most qualified individual or firm based on all materials and information presented. The City will then begin the negotiations for an agreement with the selected individual or firm.

Any individual or firm failing to submit information in accordance with the procedures set forth in the RFP may be subject to disqualification. The City reserves the right to change the solicitation schedule or issue amendments to the solicitation at any time. The City reserves the right, at its sole discretion, to waive immaterial irregularities contained in the solicitation. The City reserves the right to reject any and all proposals at any time, without penalty. The City reserves the right to refrain from contracting with any respondent. Individuals or firms eliminated from further consideration will be notified by mail by the City as soon as practical.

Proposals remain confidential until closing deadline after which proposals are considered a public record subject to public disclosure under RCW 42.56, the Public Records Act. Proposers shall mark as "proprietary" any information that the Proposer believes meets the exemption under RCW 42.56.270(1). This designation will be considered by the City in response to public records requests.

Any Proposal may be withdrawn, either personally or by written request, at any time prior to the time set for the Proposal submittal deadline.

Inquiries

Only emailed (written) inquiries will receive a response. Inquiries received after 5:00pm, September 8, 2021 will be disregarded. Direct all inquiries regarding this request for proposals to Shawn Hunstock, Finance Director, at shunstock@mukilteowa.gov.

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 firms to apply.

Reservations

The City of Mukilteo reserves the right to reject any and all RFP 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 a RFP. 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.

Attachments:

Form A – Related Project Experience
Form B – Bidders Checklist
Sample City of Mukilteo Contract Document

**CITY OF MUKILTEO
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FORM A RELATED PROJECT EXPERIENCE

Project Name	
Contracting Entity	
Location	
Year Completed	
Short Description	
Name(s) and Contact Information of Contracting Entity	
Completed on time and on budget? If no, explain.	

Project Name	
Contracting Entity	
Location	
Year Completed	
Short Description	
Name(s) and Contact Information of Contracting Entity	
Completed on time and on budget? If no, explain.	

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Location	
Year Completed	
Short Description	
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Completed on time and on budget? If no, explain.	

**CITY OF MUKILTEO
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FORM B_BIDDERS CHECKLIST

	Initial
1. Letter of intent	
2. Firm's official contact information and firm's billing information	
3. Proposal Introduction, background, and objectives statement.	
4. Qualifications and experience.	
5. Proposed project approach.	
6. Completely addressed each item in Section 2.	
7. At least three (3) customer references enclosed (preferably governmental).	
8. Completed Supplemental Forms in Exhibit C.	
9. Information concerning system requirements and capabilities enclosed	
10. All questions concerning implementation and support were answered and enclosed.	
11. Components and Ongoing Support Costs break down all cost information for the entire system.	
12. Complete and enclose "Bidder's Checklist."	

**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): <input type="checkbox"/> Lump Sum <input checked="" type="checkbox"/> Time and Expense, Not to Exceed a Maximum Amount	Original Contract Time: <input type="checkbox"/> ___ Calendar Days <input checked="" type="checkbox"/> Completion on or before <u>Date</u>
Original Agreement Amount: Actual Cost \$ _____ Allowance \$ _____ Total Not to Exceed \$XXXXXX.00	<input type="checkbox"/> Federal Funding Requirements Apply <input type="checkbox"/> State Funding Requirements Apply <input checked="" type="checkbox"/> N/A

**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 Agreement over \$30,000

Consultant's cost break down, or lump sum cost if applicable, by work task is 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 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:II.

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 Consultant Agreement over \$30,000

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

Consultant Agreement over \$30,000

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,
Mayor

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**

Sample Contract Document