



## REQUEST FOR STATEMENT OF QUALIFICATIONS

### For On-Call Services

***Deadline: Thursday, March 18, 2021 at 4:00PM Local Time***

#### ***Purpose***

The City of Mukilteo is requesting Statement of Qualification's (SOQ's) from qualified professionals for on-call consulting services for the following ten (10) subject areas:

- 1) Land Use/Community Planning;
- 2) Environmental;
- 3) Archaeological/Cultural Resources;
- 4) Arboricultural Services;
- 5) Surveying;
- 6) Geotechnical;
- 7) Engineering;
- 8) Public Outreach/Graphic Design;
- 9) Landscape Architecture; and
- 10) Building Inspection and Plan Review Services.

Consultants responding to this SOQ may request to be considered for one or more of the above subject areas.

Consultant(s) will provide a variety of on-call services to the City as projects are budgeted, or as projects are submitted to the City for development review. Upon Council approval and contract execution, the on-call contract will be for a period of one (1) year with an opportunity for two (2) one-year extensions upon mutual agreement. The City may choose to select more than one consultant to provide these services, even within a specific subject area.

At this time the City has no specific projects budgeted for the 2021. The City provides no guarantee that projects will become available. However, as projects are submitted or priorities change, the City may need the services of hired consultants with expertise in the nine subject areas more fully described as follows:

#### **1. Land Use/Community Planning Services**

- Permit review, policy planning and code amendment assistance
- GIS support
- Other technical planning support related to the above
- Outreach and public involvement activities related to the above

#### **2. Environmental Services (e.g. wetland, stream, habitat, but not including geotechnical)**

- Critical area evaluations /monitoring plans
- Environmental permitting/SEPA support

- Critical area report peer/third party review
  - Biological opinions
- 3. Archeological/Cultural Resource Evaluations**
- Archaeological investigations, reports, and/or monitoring plans
  - Peer/third party review
- 4. Certified Arboricultural Services**
- Peer/third party review - arborist evaluations and reports
  - ISA Certified Arborist with Tree Risk Assessment certification
  - Certified ISA Arborist Municipal Services
- 5. Land Surveying Services**
- Prepare legal descriptions
  - Review legal descriptions
  - Site surveys
  - Project staking
  - Legal description/easement research
- 6. Geotechnical Services**
- Geotechnical evaluations
  - Peer/third party report review
  - Construction inspection services
- 7. Engineering Services**
- Construction inspection and construction management
  - Design engineering
  - Private development review, including review, preparation of review comments, and inspections of issued Right-of-Way, Clearing & Grading, and Stormwater permits
  - Project scoping and preliminary cost estimation
  - Grant preparation assistance
  - Structural engineering
  - Traffic engineering
  - Stormwater utility and transportation planning
  - AutoCAD & drafting support
- 8. Public Outreach & Graphic Design Services**
- Project outreach
  - Public and community involvement
  - Project or program “branding”
- 9. Landscape Architectural Services**
- Landscape design preparation and review
  - Code amendment assistance
- 10. Building Inspection and Plan Review Services**

- Field inspections of issued mechanical, building, fire and plumbing permits
- Plan check review, including preparation of review comments
- Building related code enforcement
- Respond to customer inquiries on building and related codes

***Scope of Services (Subject Areas)***

**1. Land Use/Community Planning Services**

The consultant shall be capable of providing a variety of land use and community planning services which may include, but are not limited to, planning/policy development code amendments, urban design, economic development, transportation planning, development review, GIS support, and project scheduling and coordination experience.

The consultant must demonstrate competence and qualifications related to the services performed including:

- Extensive experience working with local governments on both current and long-range planning projects.
- Demonstrated ability to conduct public outreach and community participation efforts related to Land Use/Community Planning services.
- Successful experience implementing GIS systems, training, and ability to communicating with non-technical customers about GIS functions and capabilities.
- Ability to respond to unexpected as well as regularly scheduled requests for services with minimal delay.
- Ability to work collaboratively in a regulatory environment with other agencies, interest groups, and permit applicants.

**2. Environmental Services**

The consultant must be able to provide on call environmental services which may include, but are not limited to, wetland, stream, animal habitat, and plant community identification. Environmental services also include planning, inventory, delineation, permitting, regulatory compliance, design, implementation, and construction management of mitigation, monitoring, grant writing, and watershed analysis and planning. Services related to environmental code, including experience with shoreline and floodplain areas, and policy support is also sought. These capabilities may apply to freshwater, estuary and marine habitats.

The consultant must demonstrate competence and qualifications related to the services performed including:

- Successful experience in reviewing and preparing critical areas studies including critical area reports, mitigation plans, SEPA checklists, site and civil plan review, and biological assessments.

- Possess a strong knowledge of the Washington State Department of Ecology’s Wetland Rating System for Western Washington and the Washington State Wetlands Identification and Delineation Manual.
- Successful experience in evaluating development proposals in areas where streams, rivers, wetlands, and endangered species exist.
- Successful experience preparing Biological Opinions that have been accepted by state and federal agencies.
- Ability to respond to unexpected as well as regularly scheduled requests for services with minimal delay.
- Ability to work collaboratively in a regulatory environment with other agencies, interest groups, and permit applicants.

### **3. Archaeological /Cultural Resource Evaluations**

The consultant will be expected to provide the full range of services to assist the City in meeting obligations required by the Washington State Department of Archaeology and Historic Preservation (DAHP) and federal agencies. The Cultural Resources Consultant shall provide all services relating to cultural resources management as requested by the City, which may include, but are not limited to, archaeological and historic resources research and reconnaissance; site testing; resource recovery; construction monitoring; data recovery; geomorphological assessment; artifact cataloging; cultural resource compliance training, report preparation; mitigation, and monitoring. Third party review of archeological and cultural resources reports is also sought. The consultant will have complete responsibility for the employment and supervision of all personnel used in completing the assigned work.

The consultant must demonstrate competence and qualifications related to the services performed including:

- Successful experience in preparing and obtaining Archaeological Excavation Permits from the Washington State DAHP.
- Professionally qualified to perform archeological and cultural resource investigations throughout the Puget Sound region according to DAHP qualifications.
- Successful experience in designing, implementing mitigation and monitoring plans as well as reviewing (third party review) mitigation and monitoring plans.
- Listed on the DAHP Archaeological Consultant list.
- Ability to respond to unexpected as well as regularly scheduled requests for services with minimal delay.
- Ability to work collaboratively in a regulatory environment with other agencies, interest groups, and permit applicants.

### **4. Certified Arboricultural Services**

The consultant must be certified and able to provide on-call arboricultural and other related support and professional staff services. These services may include, but are not limited to, tree health and certified risk assessments, testing, treatments, vegetation

inventories, design and restoration as well as reviewing refinement of existing or new regulatory codes.

The consultant must demonstrate competence and qualifications related to the services performed including:

- Preparing tree health and certified risk assessments which may include custom vegetation management plans for pruning or removal to reduce risk, diagnosis and treatment recommendations to improve health, and general tree care instructions.
- Replanting plans for situations where vegetation has been removed or altered, sometimes in critical areas.
- Third party review of arborist reports.
- Test for tree decay, stability, and soil types starting with a visual tree assessment from the ground. If further testing is necessary, other types of testing can be performed including: Increment Borer, Resistograph, Tomograph, Pull Test, or Soil Profile.
- Conduct pest assessments and recommend proper treatments.
- Provide inventories of trees or understory vegetation; collect GPS/GIS data for inclusion in databases used for long-term management; and provide tree-related policy development and implementation services.
- Design and implement plans for retaining or restoring natural areas and related native understory plants. Services include recommendations for drought-tolerant plantings and/or complicated neighborhood greenbelt restoration.
- The consultant should have International Society of Arboriculture (ISA) Certified Tree Risk Assessor on staff. All work will be completed in accordance with the ISA standards.

#### **5. Surveying Services**

The on-call survey consultant shall be able to provide a full range of survey services. The consultant shall be licensed within the State of Washington and must demonstrate competence and qualifications related to the services which may include, but are not limited to,:

- Detailed topographic survey work to aid in the design and construction of capital projects.
- Ability to work in heavily vegetated and steep slope terrain.
- Ability to perform right of way and private property research to verify and establish property boundaries and easements.
- Preparation and review of legal descriptions and property maps for right of entry, easement and permitting documents.
- Preparation of base drawings in AutoCAD Civil 3D.

#### **6. Geotechnical Services**

The consultant must be able to provide geotechnical services ranging from project scoping, development review and capital project construction. The consultant shall have experience and knowledge of Mukilteo's geology & geomorphology.

The consultant shall be licensed within the State of Washington and must demonstrate competence and qualifications related to the services performed which may include, but are not limited to:

- On-call peer/third party review.
- Perform site investigations, soil sampling, groundwater monitoring, and soil testing.
- Provide design-level geotechnical analyses and recommendations for capital projects
- Evaluate surface and groundwater site conditions.
- Conduct slope stability analyses and provide recommendations.
- Construction inspection services including soil and rock materials testing.

#### **7. Engineering Services**

Consultants must be able to provide a wide range of engineering services which may include, but are not limited to, project scoping, transportation engineering and planning services, stormwater engineering and planning services, capital project design, construction management and inspection services, permitting assistance, grant scoping and preparation assistance, development review, public works and engineering plans and procedures, and related public outreach and community meetings.

The consultant shall be licensed within the State of Washington and must demonstrate competence and qualifications related to the services performed including:

- Knowledge and understanding of the City's development standards and standard plans.
- Experience working with the Department of Ecology's Stormwater Management Manual for Western Washington (2012, as amended)
- Ability to prepare construction cost estimates and quantity tabulation.
- Experience designing in geologically sensitive areas.
- Ability to work with various permitting agencies.
- Successful experience in permitting and working within BNSF railroad right-of-way.
- Ability to work within tight timeframes and produce within budget.

#### **8. Public Outreach & Graphic Design Services**

The public outreach & graphic design consultant shall be able to provide a full range of public outreach and multimedia communication services. The consultant must demonstrate competence and qualifications related to the services performed including:

- Implementing a diverse range of public outreach techniques on sometimes contentious issues to meaningfully engage the public.
- Preparing web and multi-media communications and outreach materials.
- Ability to convey information to the public in an understandable manner that encourages public feedback.
- Ability to effectively convey public outreach results in various forms (e.g. orally, graphically, in writing).
- Ability to engage non-English speaking and other overburdened or historically underrepresented communities that traditionally have not actively participated in public processes.
- Ability to successfully advertise and host public outreach events.

**9. Landscape Architect Services**

The landscape architect consultant shall be able to provide a full range of services and shall be licensed within the State of Washington. The consultant must demonstrate competence and qualifications related to the services performed which may include, but are not limited to:

- Ability to provide landscape designs meeting code for projects of various sizes and scale.
- Interpretation and development of code.
- Peer/third party review and evaluation of landscape plans.

**10. Building Inspection and Plan Review Services**

The on-call Building Inspection and Plan Review Services consultant shall be able to provide a full range of services related to building inspection and plan review which may include, but not be limited to plan review, inspections, code enforcement, and responding to customer inquiries. The consultant must demonstrate competence and qualifications related to the services performed including:

- Knowledge of local government building inspection, plan review, enforcement processes.
- Knowledge of applicable building, fire, plumbing, energy and mechanical codes.
- Promptly and accurately review building related plans with related documentation
- Preparation of review comments.
- Field inspections and related documentation.
- Communication with the public, with tact, relative to inquiries and interpretations of related codes.
- Other duties as requested by the City.





***Schedule***

Date	Task
<b>March 18, 2021 at 4:00 PM</b>	<b>Deadline for RFQ Submittals</b>
March 19-April 1, 2021	Review of SOQ, selection process & reference checks
April 2, 2021	Notify successful firms of selection
April 19, 2021	City Council award of contract

The above noted schedule, except the deadline for the RFQ Submittals, is tentative and may be changed based on the number of RFQ’s submitted.

***Procedures for Submittal***

If interested in responding to this RFQ, submit an email to Andrea Swisstack, Public Works Director, at [aswisstack@mukilteowa.gov](mailto:aswisstack@mukilteowa.gov), no later than the RFQ submittal deadline listed above indicating your interest in the project.

Emails shall include:

1. Email Body Text:
  - a. Firm name
  - b. Contact Information
  - c. A list of which subject areas you wish to be considered for providing services
  - d. A link to your website.
2. Email Attachments
  - a. A cover letter that briefly describes your firm and your interest being selected for the City’s on-call roster (limited to one (1) page, minimum 11-point font).
  - b. A short description of your firm’s experiences and abilities in the subject area in which you are submitting (limited to a maximum of one (1) page per subject area, minimum 11-point font)
  - c. A separate list of references for each subject area (limited to three (3) references per subject area)

For your records, the City will provide a confirmation email confirming receipt of your interest in the proposal. Emails received after the deadline, and all hard/paper copy submittals will be disregarded.

***Selection Process***

A Review Committee consisting of various City Staff will evaluate and rate the proposals using the following criteria:

1. The firm’s or team’s ability to perform the work
2. Demonstrated experience with similar projects
3. Familiarity with the City of Mukilteo
4. Demonstrated ability to keep projects on time and within budget





5. Demonstrated ability to communicate and work effectively with the public, staff, boards, commissions and elected officials; and
6. Responsiveness to this Request for Qualifications

Following evaluation of the RFQ's, the City will check references of the top firm(s) prior to making a selection. At the Review Committee's discretion, informal interviews may be conducted for the top two to three firms in a subject area prior to the Review Committee making a final selection, however interviews are not anticipated at this time.

***Agreement for Services:***

The selected consultant(s) will be expected to enter into the City's standard Professional Services Agreement attached to this RFQ. Insurance requirements are included in that agreement. The contract period shall be for a one (1) year period with opportunities for two (2) additional one (1) year extensions upon mutual agreement (for a maximum total of three (3) years).

***Inquiries***

Direct all inquiries regarding this request for qualifications to Andrea Swisstack, Public Works Director, at [aswisstack@mukilteowa.gov](mailto:aswisstack@mukilteowa.gov) or 425.263.8081, or Lauren Balisky, Planning Manager, at [lbalisky@mukilteowa.gov](mailto:lbalisky@mukilteowa.gov) or 425.263.8042.

***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's 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 RFQ. 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.

Encl. Draft On-Call Consultant Agreement Template

**CITY OF MUKILTEO  
ON-CALL CONSULTANT AGREEMENT**

**This Agreement is entered into for the provision of consultant services to the City of Mukilteo for the following: <<brief description of categories & work>>**

**Work Description:** See attached scope of work.

**Parties to the Agreement**

<b>Consultant:</b>	<b>City:</b>
<b>Name</b> <b>Address</b>	City of Mukilteo 11930 Cyrus Way Mukilteo, WA 98275
Project Manager: Phone: Fax: E-mail:	Project Manager: Andrea Swisstack Phone: 425.263.8081 Fax: 425.367.2670 E-mail: aswisstack@mukilteowa.gov
<b>Type of Agreement</b> (Check One): <input checked="" type="checkbox"/> Task Order, <input type="checkbox"/> Time and Expense, Not to Exceed a Maximum Amount	<b>Original Contract Time:</b> <input checked="" type="checkbox"/> One Year with up to 2, one-year extensions <input checked="" type="checkbox"/> Completion on or Before May 1, 2024
<b>Agreement Amount:</b> Set by individual Task Orders	<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 entered into on <<DATE>>, 2021 between the City of Mukilteo, Washington, hereinafter called "the CITY", and <<CONSULTANTNAME>>, a Corporation organized under the Laws of Washington and licensed to do business in Washington, hereinafter called "the CONSULTANT".

WHEREAS, the CITY needs small project, short term, consulting assistance to complete public works and development projects and assignments on a Task Order basis; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitments and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for projects and assignments; and

WHEREAS, the CONSULTANT represents that he/she 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 contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows

### **I. GENERAL DESCRIPTION OF WORK.**

The work under this agreement shall consist of the described work and services as herein defined and necessary to complete Task Orders (TO) requested and approved by the CITY. The CONSULTANT shall furnish all services, labor, materials and related equipment necessary to conduct and complete the work as specified in the TO consistent with requirements as specified in this agreement.

### **II. SCOPE OF WORK**

The Scope of Work for a specific Task Order shall be generated by either the Consultant or the City, as the City may need and approved by the CITY using the Formal Task Assignment Document at the time each Task is negotiated. The project level of effort for each Task Order shall be estimated by the CONSULTANT and negotiated with the CITY at that time.

### **III. GENERAL REQUIREMENTS**

All aspects of TO work coordination with outside agencies, groups or individuals should be specified in the TO or otherwise shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY.

All reports, PS&E materials, and other data furnished to the CONSULTANT by the CITY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of the agreement are instruments of service for this project and are property of the CITY. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service, not occurring as a part of this project, shall be without liability or legal exposure to the CONSULTANT.

### **IV. TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any Task Order work under this agreement until authorized in writing by the CITY for the specific Task Order. All work under a specific Task Order agreement shall be completed by the date shown in the Task Order documents for a specific scope of work.

For individual Task Orders, the established 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 NATURE or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the CITY is required to extend the established completion time.

Authorization to proceed will be given on a Task Order basis. Authorization to begin work on one task shall not be interpreted as authorization to proceed upon another task.

The CONSULTANT will complete all work and submit all deliverables required by this agreement according to the schedule attached to each Task Order.

This Agreement shall be in affect for the term of one (1) year from the signing of this contract. A one (1) year extension to this contract may be entered into upon mutual agreement by both the CITY and the CONSULTANT with a maximum of one additional year of extension for a total of three years. The hourly rates and overhead fees set forth in Exhibit A shall be binding throughout the initial term, but the CONSULTANT may renegotiate the contact hourly rates and overhead fees with the CITY for the extension period. If rates are to be renegotiated, the CONSULTANT shall submit one (1) month prior to the end of the current contract, the hourly rates and overhead charges for the CITY to review.

## **V. PAYMENT**

### **Payments for Task Order Agreements**

When the type of agreement shown in the header to this agreement is a Task Order agreement, payment for all consulting services for this project shall be on a pre-negotiated basis for direct hourly costs plus overhead and fixed fee as outlined in Exhibit "A".

### **Monthly Progress Payments**

The CONSULTANT may submit invoices to the CITY for reimbursement of actual costs plus the calculated overhead costs. Such invoices shall be in a format approved by the CITY. Invoices shall be supported by an itemized listing for each item including direct salary, direct non-salary, and allowable overhead costs.

In the event a work task is delayed for the convenience of the CITY, a portion of the hourly costs associated with that task may be included in the next monthly invoice for payment by the CITY.

Any portion of the task order not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX, Termination of Agreement.

### **Maximum Total Amount Payable**

The maximum total amount payable, by the City to the CONSULTANT under this agreement, shall not exceed the amount shown in the heading of this agreement, as adjusted by any mutually agreed Change Orders.

### **Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this agreement, contingent upon receipt of all PS&E, plans, maps, notes, 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.

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.

Payment made to the CONSULTANT shall not constitute acceptance of the work or any portion thereof which is not in accordance with this contract. The CITY retains the right to pay only that percentage of the total contract amount that equals the same percentage that work completed bears to the total amount of work required to be performed under this contract.

### **Inspection of Cost Records**

The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the CITY, for a period of three (3) years after final payment the cost records and accounts pertaining to this agreement and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3)-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

### **VI. SUB-CONTRACTING**

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 subcontractor, any contract or any other relationship.

### **VII. EMPLOYMENT**

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 contract. 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.

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 or might arise under any Workmen'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 to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

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.

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

### **VIII. NONDISCRIMINATION**

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, 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.

During the performance of this agreement, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with applicable Regulations relative to nondiscrimination, and the American Disabilities Act of 1992, as amended.
- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, creed, color, sex, 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.
- C. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the 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.

D. **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:

1. Withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the agreement, in whole or in part.

E. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (F) 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 sub-consultant or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.

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.

## **IX. TERMINATION OF AGREEMENT**

A. The CITY may terminate this contract at any time by giving the CONSULTANT written notice of such termination, unless otherwise specified by the CITY. In such event, the CONSULTANT shall stop the performance of the CONSULTANTS services hereunder except on work, mutually agreed upon in writing between the CONSULTANT and the CITY, necessary to carry out such termination.

B. In the event of termination, the CITY shall pay the CONSULTANT all contract costs incurred and consistent with the contract prior to termination. The CONSULTANT shall not be entitled to compensation for lost profit or expectations of profit due to the CITY'S early termination of this contract. All payments shall comply with ARTICLE V above.

- C. In the event of termination, the CONSULTANT shall provide the CITY with all finished and unfinished Work Product prepared by the CONSULTANT under this contract. Such materials shall be the property of the CITY, unless otherwise specified in writing by both parties. Notwithstanding any other provision of this paragraph, CONSULTANT shall have the right to maintain copies of records as required by its record keeping responsibilities under applicable law provided CONSULTANT does not otherwise use or disclose such records.

**X. CHANGES OF WORK.** The CONSULTANT shall make such changes and revisions in the complete work of each Task Order supplemental of this agreement as necessary to correct errors appearing therein, when required to do so by the CITY, without additional compensation thereof. 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 XIV.

Should the CITY find it desirable for its own purposes to delete portions of the agreed upon scope of work, prior to authorization to proceed with those portions to be deleted, the CITY shall so inform the CONSULTANT of such change(s) with no resulting expense to the CITY.

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 Section IX - Termination of Agreement as applied solely to the portions to be deleted.

## **XI. DISPUTES**

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 resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

## **XII. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for Snohomish County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for Snohomish County.

The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

### **XIII. LEGAL RELATIONS, INDEMNIFICATION, AND INSURANCE**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this agreement. This agreement shall be interpreted and construed in accordance with the laws of Washington.

The CONSULTANT's relation to the CITY shall be at all times as an independent contractor.

#### **Indemnification / Hold Harmless**

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 fees, arising out of or resulting from the acts, errors or omissions of the CONSULTANT in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.

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, and volunteers, the CONSULTANT liability, including the duty and cost to defend, 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 Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

#### **A. Insurance Term**

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, or employees.

#### **B. No Limitation**

The CONSULTANT'S maintenance of insurance as required by the 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.

#### **C. Minimum Scope of Insurance**

The CONSULTANT shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and 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 using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the CONSULTANT'S profession.

**D. Minimum Amounts of Insurance**

The CONSULTANT shall maintain the following insurance limits:

1. Automobile 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.

**E. Other Insurance Provision**

The CONSULTANT'S Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the CITY. Any insurance, self-insurance, or self-insured pool coverage maintained by the CITY shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

**F. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**G. Verification of Coverage**

The 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 requirements of the CONSULTANT before commencement of the work.

**H. Notice of Cancellation**

The CONSULTANT shall provide the CITY with written notice of any policy cancellation within two business days of their receipt of such notice.

**I. 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 contract 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.

**J. City Full Availability of Consultant Limits**

If the CONSULTANT maintains higher insurance limits than the minimums shown above, the CITY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the CONSULTANT, irrespective of whether such limits maintained by the CONSULTANT are greater than those required by this contract or whether any certificate of insurance furnished to the CITY evidences limits of liability lower than those maintained by the CONSULTANT.

**XIV. EXTRA WORK**

A. 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 for each task order 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 shall modify the agreement accordingly.

B. The CONSULTANT shall submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (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 condition of paragraphs (A) and (B) above, the maximum amount payable for work performed under this agreement shall not be increased or considered to be increased except by specific written supplement to this agreement.

## **XV. ENDORSEMENT OF PLANS.**

The CONSULTANT shall place his/her Professional Seal on all reports, plans, estimates or other engineering data furnished by the CONSULTANT. All work of an engineering nature by sub-consultants shall likewise be sealed by the Engineer in Responsible Charge of the work.

## **XVI. 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 XIII. 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.

## **XVII. FEDERAL AND STATE REVIEW**

On-Call Consultant Agreement

Page 12



When Federal or State grant funds or loans are utilized for any part of this contract, the appropriate Federal and State agencies shall have the right to participate in the review or examination of the work in progress.

## **XVIII. NOTICES, DESIGNATED REPRESENTATIVES AND NON-WAIVER PROVISION**

### **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 to the following addresses: Notices to the CONSULTANT shall be sent to the Consultant's identified Project Manager at the address set forth in the header of this Agreement. Notices to the CITY shall be sent to the City's Project 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.

### **Project Managers as Designated Representatives.**

The individuals identified as Project Managers in the header of this agreement shall be the designated representatives of the parties to this contract. The CITY's Project Manager is responsible for: Coordinating the CITY'S efforts relating to the work of the CONSULTANT; providing any necessary information and direction to the CONSULTANT; reviewing progress and content of the CONSULTANT'S work in order to ensure that it meets the requirements of this Agreement; reviewing and monitoring the quality and quantity of such work, and; reviewing and processing invoices from the CONSULTANT for payment. The CONSULTANT shall report to and take any necessary direction from the Project Manager.

### **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 the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

## **XIX. COMPLETE 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 by written instrument properly signed by both parties hereto.

## **XX. EXECUTION AND ACCEPTANCE.**

This agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal and the supporting materials submitted by the CONSULTANT, and does hereby accept the agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

**Consultant**

**City of Mukilteo**

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
Jennifer Gregerson  
Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Carol Moore, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ogden Murphy Wallace  
Office of the City Attorney

Attachments:  
Exhibit A: Scope of Work  
Consultant Hourly Rates