



CITY OF MUKILTEO

Public Works Department

REQUEST FOR PROPOSALS Stormwater Pipe CCTV Inspections

Deadline: May 28, 2021 at 3:00PM exactly (PST)

Purpose

The City of Mukilteo is requesting proposals from qualified vendors interested in performing closed-circuit television (CCTV) inspections of stormwater pipes within the City of Mukilteo.

Background

The City of Mukilteo (City) is beginning the process of cleaning and gathering CCTV inspection data for stormwater pipe condition assessment and water quality benefit. There are approximately 75 miles of stormwater pipes in the City's inventory, and it is the City's intention to assess the entire inventory once over the next 10 years. The initial inspection phase, over the next three years, will focus on 24 miles of pipes that have been prioritized by water quality benefit from pipe cleaning and inspection for illicit connections, and age of infrastructure. The City anticipates cleaning and inspecting up to four (4) miles of stormwater pipes in 2021; and an additional twenty (20) miles in 2022-2023.

The goals of the pipe inspections are the following:

1. Verify that GIS data is accurate for the inspected assets.
2. Clean stormwater conveyance pipes in advance of pipe inspection to achieve a water quality benefit and pipe condition conducive to quality CCTV pipe inspection.
3. Identify and manage illicit connections to the City's stormwater system, including those that pose a threat to water quality.
4. Obtain quality inspection data, using NASSCO PACP inspection methods, to understand the condition of stormwater pipes to support the City's long-term planning and allocation of resources for pipe maintenance, repair, and/or replacement.

Project Description

This project includes the CCTV inspection of city-owned stormwater pipes, 8-inches diameter and greater. The initial contract term is from contract execution in 2021 through December 31, 2021, covering an estimated four (4) miles of pipe. The contract will have an option to extend up to an additional two (2) years, with a final project completion date of December 31, 2023. The extended contract would be for inspection of approximately twenty (20) additional miles of pipe.

Scope of Work

This scope includes the CCTV inspection of up to four (4) miles of city-owned stormwater pipes, 8-inches diameter and greater, in 2021.

- Perform CCTV video inspections, using National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP), version 7.0 compliant software of assigned City-operated stormwater pipes 8 inches or greater in diameter within the City of Mukilteo.
- Provide traffic control, according to The Manual for Uniform Traffic Control Devices (MUTCD), to maintain vehicle and pedestrian safety within the City Right-of Way

(ROW). Traffic control flaggers will be compensated by the City at a negotiated rate set forth in the final contract.

- Traffic control plans shall be submitted to the City prior to inspections. Traffic control plans shall be compensated by the City at a negotiated rate set forth in the final contract.
- Access and update the City's ArcGIS map information using ArcGIS Collector.
- Update the City's ArcGIS Tracking App, which will act as a work tracking and work order system for the project.
- Acquire necessary permits for work in the right-of-way.

Deliverables

- Weekly submittals of pipe CCTV inspection videos coded using NASSCO PACP Version 7, in mp4 format.
- Weekly submittals of NASSCO PACP Version 7 compliant pipe inspection data in format that is compatible with the City's GraniteNet software (Version 5.1.2).
- PDF file format of PACP inspection report.
- Weekly Summary Reports using City provided Microsoft Excel template.

All deliverables shall be uploaded by the vendor to a portable hard drive (provided by the City) and delivered to Mukilteo City Hall (11930 Cyrus Way, Mukilteo) weekly.

Vendor Requirements

The vendor shall:

- Perform CCTV inspections using to NASSCO PACP ver. 7 standards (pre-cleaning to be performed by City crews and inspections assigned to the Contractor). While the coding and reporting of observed defects will be PACP compliant, it should be noted that the cleaning standards portion of inspections may not be PACP compliant. For the inspection to be PACP compliant, the pipe would have to be completely clean and free of debris, which is not the intent of this contract.
- 2021 inspections (four miles of pipe) shall be substantially complete by September 30, 2021.
- Assure that all inspectors are NASSCO PACP certified.
- Provide NASSCO PACP compliant PDF reports for each inspection. At a minimum, reports to include mandatory fields in the header section of the PACP inspection report, and the following information:
 - Inspector's name
 - Inspector's NASSCO PACP Certificate number
 - System owner (i.e. City of Mukilteo)
 - Inspection date and time
 - Weather during inspection
 - Pre-cleaning status
 - Direction of inspection
 - Inspection Status
 - Drainage basin
 - Asset ID
 - Location of inspection (nearest address & city)
 - Pipe use (i.e. storm, sanitary, etc.)
 - Pipe size (height & width)
 - Pipe shape
 - Pipe material
 - Length of inspection

- Upstream structure ID
 - Downstream structure ID
 - Observed defect codes, descriptions, locations, and grades
 - Pipe ratings
 - Photos of significant defects
- Prepare Weekly Summary Reports using a City provided Microsoft Excel template, documenting the following items:
 - Total length of pipe inspected
 - Asset IDs for complete pipe inspections
 - Pipe material for complete pipe inspections
 - Pipe size for complete pipe inspections
 - Pipe ratings for complete pipe inspections
 - Urgent situations (including but not limited to sinkholes, daylight visible during pipe inspection, and obvious sanitary sewer or hazardous materials discharge into the storm system) encountered for City follow up
 - GIS discrepancies, including new assets discovered in the field
 - List of pipe ID/location with unmapped connections, with suspected connection type identified
 - Any other noteworthy items or problems encountered in the field
- Provide a NASSCO PACP ver. 7 compliant database that allows for the import of CCTV inspection data into the City's GraniteNET system. CCTV vendor must demonstrate that their inspection software can provide GraniteNet compatible data and be uploaded into the City's GraniteNet system successfully, without data manipulation by the City prior to being awarded this contract. The CCTV vendor must provide a test PACP database to the City in advance of the contract being awarded to demonstrate compatibility.
- Use ArcGIS Collector to view asset and base map information, and update mapping information
- Use ArcGIS Collector Tracking App to view and edit assigned work orders. The Tracking App is an ArcGIS based tool that the City of Mukilteo uses to track cleaning and inspection status. The vendor is responsible for providing equipment capable of accessing the City's ArcGIS Collector. ArcGIS Collector and the Tracking App can be accessed through a tablet or smartphone device but does not require an ArcGIS user license.
- Provide all supervision, labor, equipment, materials, technical expertise, safety equipment, and service operation to complete the task.
- Obtain a City Right-of-Way permit prior to conducting any work within the right-of-way.
- Responsible for compliance with all relevant federal, state, and local regulations and practices, including WA State Industrial Regulations, OSHA, WISHA, L&I worker safety, and confined space entry.
- The vendor shall have a written safety policy. The safety policy shall be available on the job at all times and shall be provided to the City upon request.
- The vendor shall have a written COVID safety plan. The COVID safety plan shall be available on the job at all times and shall be provided to the City upon request.
- Pipe inspection videos, reports, photos, and weekly summary reports will follow the City provided naming convention.
- CCTV inspections will be paused for up to one week after the initial day of inspections for City review and acceptance of initial inspection reports and data format. If the City review of the initial day of inspections finds modifications of inspection reports and submitted data format are necessary, the vendor shall comply with the request.

- If subcontractors are utilized to complete a task it is the responsibility of the vendor to manage and direct subcontracted tasks.

City Staff Responsibilities

The City shall:

- Pre-clean pipes within a reasonable timeframe prior to CCTV inspection. Pipes will be cleaned to the maximum extent feasible to allow CCTV inspection equipment to travel from one end of the pipe to the other, but not necessarily to be NASSCO compliant (pipe clear of any debris).
- Provide access to the City of Mukilteo's ArcGIS Collector Tracker App to view and edit assigned work orders.
- Provide one-hour ArcGIS Collector Tracker App training to vendor staff prior to the beginning of work.
- Make a map of the stormwater drainage system, base maps, and other pertinent GIS layers necessary to complete the CCTV inspections available through ArcGIS Collector.
- Procure Right-of-Entry permission to private property owners where necessary.
- Prepare City Right-of-Way permit application form and cover associated permit fee(s).
- (Supporting information such as Traffic Control plans provided by Vendor)
- Provide a Microsoft Excel template for the Weekly Summary Reports.
- Update the City's ArcGIS geodatabase with inspection data.
- Provide a location for staging and storing trucks and project equipment, at the Public Works yard located at 4206 78th St SW, Mukilteo.
- Access to city buildings will be limited due to COVID. However, a port-a-potty location can be provided at the Public Works yard (but not the port-a-potty itself).

Schedule

The Schedule, except the deadline for the RFP's, is tentative and may be changed based on the number of responses received. Although not anticipated, the City reserves the right to conduct interviews of shortlisted firms which may adjust the schedule. If interviews are conducted, shortlisted firms will be contacted separately.

Selection Process Schedule

Date	Task
May 6 & May 13, 2021	Advertise RFP
May 20, 2021, 5:00 pm	Deadline for written inquiries
May 28, 2021, 5:00 pm	Response to RFP due
By June 7, 2021	City notification of selection
June 21, 2021	Contract award by City Council
By July 6, 2021	Notice to Proceed

Anticipated Project Schedule

Date of Completion	Task
By July 15, 2021	One hour kick off meeting
July 16, 2021	Commence inspections
September 30, 2021	Complete inspection of four (4) miles of stormwater pipe
October 7, 2021	Provide final data from all inspections to City
December 31, 2021	End of First Phase

Submittal Requirements

If you, or your team, wish to be considered for this RFP, you must submit all response materials to Jennifer Adams, Surface Water Programs Manager, at 11930 Cyrus Way, Mukilteo, WA 98275. Submittals shall be deposited in the black locked receptacle to the right of the front door of City Hall between the hours of 8:00am and 5:00pm Monday through Friday. All applicants and other interested parties submitting responses to this request must abide by appropriate social distancing when placing the proposal in the marked receptacle. It is recommended that you email jadams@mukilteowa.gov when your submittal has been deposited.

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 May 28, 2021.**

Your proposal shall:

- Be limited to single spaced, 8 1/2" by 11" typewritten pages (min. 12-point font),
- Be no more than six (6) pages, excluding resumes and PACP verifications,
- Follow the format of Items A through D below, and
- The content shall be adhered to by each firm and presented in the following order:

A. Approach (Page Limit: 2)

1. Project Organization and Staffing: Describe the approach and methods for managing the project. Provide an organization chart showing all proposed team members. Describe the responsibilities of each person on the project team. Identify the Project Director and/or Manager and the key contact person for the City. List any portion of the work to be subcontracted and information describing the qualification and relative experience of any proposed subcontractors.
2. Project Schedule: Provide a schedule for completing the task defined in the Scope of Work. Demonstrate your team's ability (adequate staffing, resources, etc) to perform the work within the requested timeframe and established budget. The vendor shall substantially complete the initial 4 miles of CCTV scope of work by September 30, 2021. Also provide a schedule for substantially completing the optional contract extension for an additional 20 miles of CCTV scope of work by September 30, 2023.

B. Related Project Experience (See Form A) (Page Limit: 1) Discussion of respondent's experience in stormwater or sanitary sewer system inspections.

1. List of at least 3 similar projects, whether ongoing or completed within last 5 years, including references. For each project provide:
 - a. Project name and location
 - b. Year completed
 - c. Short description of project, including length of pipe, size of pipe, etc.
 - d. Names, addresses, and phone numbers of owner and contact person tasked with daily responsibilities of project
 - e. Note if the project was completed on time and within budget, and if not, briefly explain
2. Sample of CCTV video coded in NAASCO PACP compliant software, provided on a flash drive, from an inspection performed by the respondent within the last two (2) years.
3. A NAASCO PACP ver. 7 compliant database from a CCTV inspection, provided on a flash drive.

C. Expertise of Project Team (Page Limit: 2 pages, excluding resumes and PACP verifications): The respondent is required to provide evidence of experience in the services specified in the Scope of Work. The experience listed must be that which was performed by the respondent's staff and/or team's staff that will be assigned to this project. The City will be focusing on the experience of the CCTV operator(s), using NASSCO PACP coding, who will be assigned to this project. The proposal shall also identify other projects the proposed CCTV operator(s) will be committed to during the same timeline. Provide verification of operator(s) PACP certifications.

D. Cost (See Form B) (1 Page): Provide estimate of cost per linear foot of CCTV. The estimate should take into consideration the costs for temporary traffic control devices and set-up (not including flaggers or traffic control plan submittals), GIS Collector data entry, and all costs associated with the CCTV pipe inspections, administration, and all overhead costs associated with the project. Table A will be used for the cost evaluation.

For your records, the City will provide an email confirming receipt of your interest in the project. All submittals received after 3:00 pm local time on May 28, 2021 will be disregarded.

RFP Evaluation and Selection Criteria

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

Criteria	Points
Approach	Maximum 10 Points
Ability to Deliver on Time and on Budget	Maximum 10 Points
Related Project Experience	Maximum 20 Points
Expertise of Project Team	Maximum 20 Points
Cost	Maximum 50 Points
Maximum Points	Maximum Points 110

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, May 20, 2021 will be disregarded. Direct all inquiries regarding this request for proposals to Jennifer Adams, Surface Water Programs Manager at jadams@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 – Costs Table

Sample City of Mukilteo Contract Document

CITY OF MUKILTEO
REQUEST FOR PROPOSALS
Stormwater Pipe CCTV Inspections

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.	

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.	

CITY OF MUKILTEO
REQUEST FOR PROPOSALS
Stormwater Pipe CCTV Inspections

FORM B_COSTS TABLE

Item No.	Item Description	Bid Quantity	Bid Unit	Unit Price (Cost per Bid Unit)
1	CCTV Video Pipe Inspection (inclusive of all costs except traffic control)	1	LF	

**CITY OF MUKILTEO
CONSULTANT AGREEMENT**

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

Project Title: INSERT NAME OF PROJECT

Work Description: See Attachment A - Scope of Work

Parties to the Agreement

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

CITY OF MUKILTEO CONSULTANT AGREEMENT

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

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

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

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

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

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

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

3. PAYMENT

A. General. The Consultant will be paid by the City for completed work and services rendered under this Agreement as set forth below. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Attachment A. A summary of the

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

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

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

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

9. TERMINATION OF AGREEMENT. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall

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

10. CHANGES IN WORK.

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

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

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

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

11. EXTRA WORK.

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

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

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

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

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

13. RECORDS.

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

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

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

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

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

15. DISPUTES.

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

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

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

17. DESIGNATED REPRESENTATIVES. The individuals identified as Project Managers in the header of this Agreement shall be the designated representatives of the parties to this Agreement. The City's Project Manager will coordinate the City's efforts relating to the work of

the Consultant; provide project information to the Consultant; review progress and content of the Consultant's work in order to ensure that it meets the requirements of this Agreement; review and monitor the quality and quantity of such work; and review and process invoices from the Consultant for payment.

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

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

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

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

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

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

NAME OF FIRM

CITY OF MUKILTEO

By: Name of Signatory

Title: Title of Person Signing

Date: _____

Jennifer Gregerson,

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