

City of Bellingham
56B-2021
City Library Facilities Master Plan



RFP INFORMATION

Purchasing Telephone:	360-778-7750
Issue Date:	October 21, 2021
Contact Email:	bids@cob.org

CLOSING INFORMATION

Date:	November 23, 2021
Time:	11:00 AM
Location:	Purchasing Office
Mailing Address:	2221 Pacific Street Bellingham, WA 98229

In an effort to comply with City of Bellingham waste reduction policies, we request that responses be submitted on recycled paper, printed in black and white (no color), copied on both sides of the page, no laminated sheets, no wire/comb binding and no cardstock. Responses shall be stapled in the upper left-hand corner only.

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1. REQUEST FOR PROPOSAL PROCESS

1.1 Inquiries

All respondents are requested to review this invitation carefully and to submit any questions concerning this Request for Proposal ("RFP"), the City's requirements or its evaluation process to Purchasing Office via the City's procurement portal at [City of Bellingham \(procurement.com\)](http://CityofBellingham.procurement.com).

Questions should be received no later than seven (7) calendar days prior to response submission deadline so that they can be addressed through the portal to ensure any necessary amendments can be published and distributed to plan holders to prevent receipt of a non-responsive solicitation.

No other City official, employee or department is empowered to speak for the City with respect to this RFP. Any Information obtained from any other source shall not be considered binding and may disqualify your proposal.

1.2 Closing Date

The City requests that six (6) complete copies of each proposal must be received by 11:00 a.m., Pacific time on November 23, 2021, at: 11:00a.m.

City of Bellingham
Attn: Purchasing Office, RFP #56B-2021
2221 Pacific Street
Bellingham, Washington 98229

Office: 360-778-7750

Proposals shall be submitted in hard copy and their envelopes should be clearly marked with the name and address of the Proponent and the Request for Proposal number and name. **DO NOT ADDRESS YOUR PROPOSAL TO AN INDIVIDUAL.** Proposals must not be sent by facsimile.

1.3 Late Proposals

Late proposals will not be accepted. The City of Bellingham accepts no liability for misdirected or lost documents.

1.4 Evaluation Committee

Evaluation of proposals will be by a committee formed by the City. The committee will rank proposals based upon the evaluation criteria identified in this RFP. The City's intent is to enter into a contract with the proponent who has the highest overall ranking (receives the highest evaluated score).

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1.5 Negotiation Delay

If a written contract cannot be negotiated within thirty days of notification of the successful proponent, the City may at its sole discretion at any time thereafter, terminate negotiations with that proponent and either negotiate a contract with the proponent who received the next highest score or choose to terminate the RFP process and not enter into a contract with any of the Proponents.

1.6 Estimated Time Frames

The following timetable outlines the anticipated schedule for the RFP and contract process. The timing and the sequence of events resulting from this Request for Proposal may vary and shall ultimately be determined by the City.

EVENT	ANTICIPATED DATE
Last Day to Submit Questions <i>(must be a date 7 calendar days prior to the submission deadline date)</i>	November 16, 2021
RFP Submission Deadline	November 23, 2021
Committee Evaluations Completed	December 2021
Contract Formation	January 2022
Contract Execution	February 2022
Service/Work Commences	February 2022

2. PROPOSAL PREPARATION

2.1 Signed Proposals

The proponent must ensure its proposal includes a letter, or statement(s), substantially similar in content to the sample proposal cover letter provided in Attachment A, **signed** by a person duly authorized to legally bind the person, partnership, company, or corporations submitting the proposal.

2.2 Irrevocability of Proposals

By submission of a clear and detailed written notice, the proponent may amend or withdraw its proposal prior to the closing date and time. Upon closing time, all proposals become irrevocable. By submission of a proposal, the proponent agrees that should its proposal be successful, the proponent will enter into a contract with the City.

2.3 Proponents' Expenses

Proponents are solely responsible for their own expenses in preparing a proposal and for subsequent negotiations with the City, if any. If the City elects to reject all proposals, the City will not be liable to any Proponent for any claims, whether for costs or damages incurred by the Proponent in preparing the proposal, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

2.4 Proposal Validity

Proposals will be open for acceptance for at least 90 days after the closing date.

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2.5 Firm Pricing

Prices will be firm for the entire contract period unless this Request for Proposal specifically states otherwise.

2.6 Currency and Taxes

Prices quoted are to be:

- a) In U.S. dollars.
- b) Inclusive of duty, where applicable.
- c) F.O.B. destination, delivery charges included where applicable.
- d) Including all taxes, where applicable

2.7 City Business Registration

Proposal shall include a statement to the effect the Proponent understands its obligation, and agrees, to obtain/maintain a City of Bellingham business registration as a requirement for performing these services/work. Access to the City's registration process can be found at: <https://www.cob.org/services/business/pages/business-registration.aspx>

2.8 Cooperative Purchasing Language

The City of Bellingham has entered into intergovernmental (Interlocal) purchasing agreements pursuant to RCW 39.34 with other Washington agencies under which either party may make purchases at the other party's accepted proposal price. By submitting an offer, the Proponent agrees to make the same bid terms and pricing, exclusive of freight, available to other Washington governmental agencies. Those public agencies that have complied with the requirements outlined in RCW 39.34 are eligible to use this contract. Further, the public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. A purchase by a public agency shall be affected by a purchase agreement/contract from the public agency, directed to the Proponent or other party contracting to furnish goods or services to the City of Bellingham. The City of Bellingham will not accept responsibility for purchases issued by other public agencies.

This offer of cooperative purchasing shall be extended by the Proponent to cover the City of Bellingham's contract duration (for any subsequent purchase agreements/contracts resulting from this RFP) or 90 days post award (for one-time purchases).

2.9 Public Disclosure Notice

All materials provided by the Proponent are subject to State of Washington public disclosure laws. Marking the entire proposal as proprietary or confidential, and therefore, exempt from disclosure will NOT be accepted or honored and may result in disclosure of the entire proposal or disqualification of the proposal solely at the discretion of the City of Bellingham. Documents identified as confidential or proprietary will not be treated as such if public disclosure laws take precedence, the information is publicly available, the information is already in the City of Bellingham's possession, the information is obtained from third parties without restriction on disclosure, or the information was independently developed without reference to the confidential information.

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2.10 Completeness of Proposal

By submission of a proposal the Proponent warrants that if this RFP is to design, create, or provide a system, or manage a program, all components required to run the system or manage the program have been identified in the proposal, or will be provided by the contractor at no charge.

3. ADDITIONAL TERMS

Where applicable, the names of approved sub-contractors listed in the proposal will be included in the Contract. No additional subcontractors will be added, nor other changes made, to this list in the Contract without the written consent of the City.

3.1 Acceptance of Proposals

This RFP should not be construed as an agreement to purchase goods or services. The City is not bound to enter into a contract with the proponent who submits the lowest priced proposal or with any proponent. Proposals will be assessed using the identified evaluation criteria. The City will be under no obligation to receive further information, whether written or oral, from any proponent.

Neither acceptance of a proposal nor execution of a contract will constitute approval of any activity or development contemplated in any proposal that requires any approval, permit or license pursuant to any federal, state, or municipal statute, regulation, or by-law.

3.2 Definition of Contract

Notice in writing to a proponent that it has been identified as the successful proponent and the subsequent full execution of a written contract and or City purchase order will constitute a contract for the goods or services, and no proponent will acquire any legal or equitable rights or privileges relative to the goods or services until the occurrence of both such events.

3.3 Liability for Errors

While the City has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guideline for proponents. The information is not guaranteed or warranted to be comprehensive or exhaustive. Nothing in this RFP is intended to relieve proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

3.4 Modification of Terms

The City reserves the right to modify the terms of this RFP at any time at its sole discretion. This includes the right to cancel this RFP at any time prior to entering into a contract with the successful proponent.

3.5 Ownership of Proposals

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All documents, including proposals, submitted to the City become the property of the City.

3.6 Contract Term

The term of the contract resulting from this RFP is estimated to be sixteen (16) weeks from notice to proceed, unless otherwise extended by mutual consent.

3.7 COVID-19 Vaccination Requirements

In accordance with City of Bellingham's [Executive Order #2021-02](#), all on-site indoor Contractors are required as of December 3, 2021, to be fully vaccinated against the COVID-19 virus. If any work identified within the City's scope of work requires or becomes necessary to be performed on-site indoor by a Contractor, this requirement will be effective and subject to verification by the City. Contractor will be required to verify the vaccination status of its employees, subcontractors and their employees using a Contractor Vaccination Verification Form, which shall be provided by the City.

4. PROJECT OR PROGRAM REQUIREMENTS

4.1 Background Statement

The City of Bellingham Public Library (Library) seeks competitive proposals for a consultant to develop a 10-year Library Facilities Master Plan to quantify existing space deficiencies and assets in the context of current program needs, to identify how best to address deficiencies and to plan for future space and program growth system-wide. It will serve as a defensible guide to the Library's capital program as it seeks to provide high quality 21st Century library services that meet the growing and evolving needs of the City.

The Facilities Master Plan will enable the Library to respond appropriately and effectively to changes in community demographics, technology and telecommunications development, emerging service expectations, aging facilities, and other future needs. Once complete, the Facilities Master Plan will be a significant asset to the Library's ongoing planning efforts.

4.2 Library Background

With its Central Library and administrative headquarters in Bellingham's vibrant downtown, and branches in history-rich Fairhaven and contemporary Barkley Village, the Bellingham Public Library serves as a vital cultural, educational and entertainment hub for our community.

The Library serves the residents of Bellingham and Whatcom County, circulating over 1.6 million items annually to more than 60,000 active borrowers. Library policies and operations are governed by the Library Board of Trustees, which has five volunteer members appointed by the Mayor of Bellingham with the approval of the Bellingham City Council.

The Library is also a department of the City of Bellingham and receives the majority of its approximately \$5.5 million in annual funding from the City's general fund. Additional

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funding for materials, programs and special projects is provided by gifts and funding from the Friends of the Bellingham Public Library.

The Library is currently staffed with approximately 49 full time employees (FTEs), including a five-person management team. Most library employees are represented under labor agreements through AFSCME 114L - Librarians, Teamsters 231 - Supervisory and Professional and Guild of Pacific Northwest Employees, Local 1937.

The City of Bellingham Public Library provides services in three library locations – the downtown Central Library (44,000 sf), Fairhaven Branch Library (10,250 sf) and Barkley Branch Library (1,420 sf) -- as well as offering extensive online services. The Library also offers holds pick-up and materials drop-off at Western Washington University, Bellingham Technical College, and Whatcom Community College. A community Drop Box for returns is located at the Cordata Food Coop. The Bellingham Public Library and the Whatcom County Library System benefit from a strong, collaborative relationship that includes access to each other's collections, a shared integrated library management system, and coordination on a variety of other services and programs to provide convenient, consistent services to our community.

The Bellingham Public Library is known throughout the state and nation for its high use by community members. In statewide data, Bellingham Public Library consistently ranks as one of the most-visited libraries with highly ranked circulation per capita.

4.3 Mission Statement

The City of Bellingham Public Library Mission Statement reads: ***Connecting our community with each other and the world.***

4.4 Relevant Resources

- Bellingham Public Library website: www.bellinghampubliclibrary.org
- Bellingham Public Library 2020-2024 Strategic Plan (2019):
- www.bellinghampubliclibrary.org/about/our-story “Key Reports”
- Bellingham Public Library Community Conversations (2019):
- www.bellinghampubliclibrary.org/about/our-story “Key Reports”
- BERK Bellingham Public Library Services and Funding Models Study (2017):
- www.bellinghampubliclibrary.org/about/our-story “Key Reports”
- RMC Architects Bellingham Public Library Space Planning (2018):
- www.bellinghampubliclibrary.org/about/our-story “Key Reports”
- Level of Service standards (2018): www.bellinghampubliclibrary.org/about/our-story “Key Reports”
- City of Bellingham Comprehensive Plan: [Bellingham Comprehensive Plan - City of Bellingham \(cob.org\)](http://Bellingham%20Comprehensive%20Plan%20-%20City%20of%20Bellingham%20(cob.org))
- City of Bellingham Climate Protection Action Plan: [Climate Protection Action Plan - City of Bellingham \(cob.org\)](http://Climate%20Protection%20Action%20Plan%20-%20City%20of%20Bellingham%20(cob.org))

5. REQUIREMENTS AND PROJECT SCOPE

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5.1 Scope of Work

The City has identified the following required tasks, at a minimum, necessary to complete the preparation of a 10-year Facilities Master Plan:

- Stakeholder/Community Involvement - Develop and implement a community involvement process to engage a broad range of stakeholders in assessing current facilities and future community needs.
- Library Facility Assessment - Complete an assessment of all Library facilities, including dedicated public library space at three college locations. Review space utilization, configuration, physical arrangement, and suitability for Library services. Make recommendations for optimal space utilization, location and adjacencies of functional public and non-public areas.
- Trend Analysis - Consider and evaluate national trends and best practices as they relate to Bellingham Public Library and City of Bellingham planning needs and incorporate this broader lens in final Facilities Master Plan report.
- Future Footprint Assessment - Assess and make recommendations as to the appropriate size and location of the Central Library and branches within current service area, accounting for forecasted population growth and City of Bellingham urban growth areas. Identify whether additional facilities are needed, recommended size & type of facilities and in what areas they should be located. Identify potential locations for additional stand-alone community Drop Boxes.
- Facility Recommendations - Provide recommendations for prioritizing into actionable steps any renovations to the current facilities which are suggested over the 10-year span of the Facilities Master Plan.
- 1st Plan Draft - Preparation of written draft Facilities Master Plan and communication method with Library for review and direction.
- Final Plan - Preparation of final written Facilities Master Plan, and presentation to the Library Board of Trustees and City Council at an upcoming, regularly scheduled meeting.
- Resources - Provide the City with electronic copies of any data, presentations, and reports developed as part of the project.

6. EVALUATION CRITERIA

All parties shall provide a response containing all required elements herein to the City of Bellingham at the stated address by the deadline given.

The City intends to enter into a contract with the Proponent who provides a proposal that, in the opinion of the City, best meets all the below listed evaluation criteria

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(receives the highest evaluated score) as determined by a selection committee formed by the City. Further, the City reserves the right to conduct interviews with one or more proponents as necessary to complete its evaluation. Upon selection of a Proponent, the City intends to enter into a contract using its standard Consulting Services Agreement, which shall be used to secure these services. A copy of the City's agreement is attached, as Attachment B, and shall be incorporated into this RFP by this reference.

Evaluation Criteria	Weight
Overall Project Approach & Understanding (<i>including level of work effort necessary to perform identified tasks and proposed timeline</i>)	40
Demonstration of Experience & Expertise (<i>in performing work of this size and nature</i>)	25
Proposed Fees/Costs	25
References	10
Total	100 pts.

The City of Bellingham reserves the right to reject any or all proposals, and to waive any irregularities or information in the evaluation process. The final decision is the sole decision of the City of Bellingham.

7. PROPONENT RESPONSE

In order to receive full consideration during evaluation, proposals should include the following:

7.1 Project Approach and Understanding

Provide a brief overview of your understanding of the City's identified scope of work. Discuss your project approach describing how you would perform the identified work. Include your methodology for performing the work and provide an accompanying timeline addressing key milestones. Specifically addressing each of the following:

- Provide an outline of the work plan for accomplishing the identified tasks
- Describe information, documents, staff assistance, facilities, or other resources you would require from the City of Bellingham to complete your work, and identify any other critical assumptions upon which your work plan is based
- Describe any challenges that you believe may be encountered and areas of concern that may need to be addressed
- Describe your ability to complete the identified task under the timeline you propose
- Include any other information regarding your project approach and understanding that you believe would be relevant to the project in addition to any additional tasks you feel necessary in which to successfully complete the City's scope of work

7.2 Experience and Expertise

Summarize your firm's qualifications, experience, and special expertise in providing the type of services/work product identified in the City's scope of work. Include resumes of key personnel. Describe their experience relative to this type of work along with their primary duties/roles proposed for this project. Identify experience with governmental

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agencies. Show ability to meet program schedule and stay within budget. Specifically addressing each of the following:

- Name and resume of project lead or manager to serve as the City's point of contact for the project
- Key personnel who you propose would provide or substantially assist in providing the requested services and act as part of the team when completing this work
- Identify and address the role of any Sub-Contractors, if applicable, you proposed to perform any portions of the scope of work.
- Provide a brief synopsis of similar projects completed within the past five (5) years of this size and nature, including your responsibilities for those projects as well as the responsibilities of other proposed team members

7.3 Proposed Fees/Costs

Provide price estimate including number of billable hours, hourly rate and total cost for services being proposed. Any expenses that are to be included as part of your proposal must be listed as a separate line item (lump sum amount is acceptable) and must include both the total anticipated expenses to be claimed and nature of the expenses (such as: office supplies, lodging, meals, etc.). Specifically, provide:

- Total Project Work Cost – include a breakdown of the total number of billable hours estimated to complete each task/milestone
- Total Not-to-Exceed Expenses, a lump sum value for any proposed travel or other expenses that will be billed to the project at consultant's cost (no mark-ups are permitted)

7.4 References

Include a list of references (including contact name and contact information) of at least three (3) similar projects of this size and nature completed within the last five (5) years. The City reserves the right to contact references without prior notification.

8. PROPOSAL FORMAT

The following format and sequence should be followed in order to provide consistency in proponent response and ensure each proposal receives full consideration. All pages should be consecutively numbered.

- a) Signed proposal cover letter as per sample provided.
- b) Table of contents including page numbers.
- c) A short (one or two page) summary of the key features of the proposal.
- d) The body of the proposal, including pricing, i.e., the "Proponent Response." that addresses all elements identified in section 7

9. PROPONENT CHECKLIST

This checklist has been provided solely for the convenience of the proponent. Its use is not mandatory, and it does not have to be returned with the proposal.

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<p>Ø Everyone involved in putting together the proposal has read and understood the requirements.</p>	<p>Ø The proponent's name and the RFP # appear on the proposal envelope.</p>
<p>Ø The proposal meets all the mandatory requirements.</p>	<p>Ø The appropriate number of copies of the proposal have been made.</p>
<p>Ø The proposal addresses everything asked for, particularly those things identified in the proponent response section.</p>	<p>Ø The proposal will be at the closing location before the closing time.</p>
<p>Ø The proposal clearly identifies the proponent, the project, and the RFP #.</p>	<p>Ø The proposal is being delivered by hand, courier, or mail – not fax.</p>
	<p>Ø The covering letter has been signed and attached.</p>

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ATTACHMENT A

Sample
Proposal Cover Letter

Letterhead or proponent's name and address

Date

Subject: ***Request for proposal name***
 Request for proposal number
 List any amendment nos. and dates

The enclosed response is submitted in response to the above-referenced Request for Proposal. Through submission of this proposal, we agree to all the terms and conditions of the Request for Proposal.

We have carefully read and examined the Request for Proposal and have conducted such other investigations as were prudent and reasonable in preparing the proposal. We agree to be bound by statements and representations made in this proposal and to any agreement resulting from the proposal.

Yours truly,

Signature

Name: _____

Type or print

Title: _____

Legal name of proponent: _____

Date: _____

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ATTACHMENT B

SAMPLE
AGREEMENT FOR CONSULTANT SERVICES
CITY OF BELLINGHAM –

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington, located at City Hall, 210 Lottie Street, Bellingham, Washington, 98225 (hereinafter the "City"), and, _____ (hereinafter the "Consultant"), in consideration of the mutual covenants herein, agree as follows:

I. OBJECTIVE. The objective of this Agreement is (hereinafter the "Project" as further set forth in Article III. below).

II. RESPONSIBLE OFFICERS.

A. The City designates _____ as its Project Manager for the Project. The Project Manager is the City's liaison officer to the Consultant for all purposes in carrying out the Project.

B. The Consultant designates _____ as its Representative for the Project. The Consultant's Representative is its liaison officer to the City for all purposes in carrying out the Project.

III. SCOPE OF WORK UNDERTAKEN BY CONSULTANT AND PROJECT SCHEDULE.

Consultant agrees to carry out the following work (hereinafter "the Project") to the satisfaction of the Project Manager:

See Exhibit "A" attached and incorporated herein by this reference.

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IV. PAYMENT.

- A. The maximum payable to Consultant under this Agreement is \$ _____, which amount shall be inclusive of any State sales tax payable by Consultant.
- B. Payments to the Consultant will be made monthly for work done during the previous month, based on invoices submitted to the Project Manager. A short narrative progress report shall accompany each invoice, which report shall discuss any problems or potential causes for delay, with the status of the Project, amount of work completed, and other relevant information.
- C. The cost records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City or any other governmental agency with jurisdiction for a period of three (3) years after final payment.
- D. The basis for payment hereunder is: See Exhibit "B" attached and incorporated herein by this reference.

V. ADDITIONAL CONTRACT TERMS AND CONDITIONS.

If any additional contract terms and conditions are mutually agreed upon, they shall appear in a separate Exhibit C, attached hereto and incorporated by this reference.

VI. CHANGES AND ADDITIONAL WORK.

- A. Upon request of the City, the Consultant shall make such revisions in work done under this Agreement as are necessary to correct errors or omissions appearing therein and make such other minor revisions as are reasonably requested, without additional compensation therefor.
- B. The City may, at any time, by written order direct the Consultant to revise portions of the Project work previously completed in a satisfactory manner, delete

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portions of the Project, make other changes within the general scope of the services or work to be performed under this Agreement, or request other additional work not reasonably implied by the scope of work. If such changes cause an increase or decrease in the Consultant's cost of or time required for performance of any service under this Agreement, an equitable cost and/or completion time adjustment shall be made, and this Agreement shall be modified in writing accordingly. The Consultant must assert any claim for adjustment under this section in writing within thirty days from the date of receipt by the Consultant of the notification of change.

- VII. INFORMATION AND WORK PROVIDED BY THE CITY.** Such data as is possessed by the City and is useful or necessary to the Consultant in order to carry out the Project shall be turned over to the Consultant at a time and place mutually convenient. The Consultant is entitled to rely on the data provided. Except as specifically provided in this section, the City is not required to retain additional consultants, do research or obtain additional data for use by the Consultant at the City's expense.

Exceptions are as follows: None

VIII. CONSULTANT'S STUDIES, REPORTS AND WORK PRODUCT.

- A. The Consultant shall prepare such information and studies as may be pertinent and necessary, or as may be requested by the City, in order that the City may pass critical judgment on the features of the work. Compliance with the foregoing provision shall not constitute additional work as described in this Agreement.
- B. All documents, maps, and other materials of whatever kind prepared by the Consultant pursuant to this Agreement shall be deemed property of the City upon completion of the Project or termination of this Agreement. The Consultant may keep file copies of its work product but shall retain no other rights of ownership therein.

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IX. TIME OF BEGINNING AND COMPLETION.

- A. The Consultant shall not begin work under the terms of this Agreement until authorized in writing by the City's Project Manager. The completion time for all work under this Agreement shall be the Project schedule contained in the Scope of Work.

- B. Established completion time is a material part of this Agreement and shall not be extended because of any unwarranted delays attributable to the Consultant. However, it 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 other conditions beyond the control of the Consultant.

X. RELATIONSHIP OF THE PARTIES; SUBCONTRACTING.

- A. The Consultant warrants that it 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 Agreement; 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, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, 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, gift or contingent fee.

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

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- C. This Agreement is for the performance of professional services. The parties intend that the Consultant shall be an independent contractor in the performance of services rendered pursuant hereto. To this end, Consultant represents that it is customarily in the business of providing the services described in this Agreement, has its own place of business, is eligible for and does file with the Internal Revenue Service a schedule of business expenses, has established or will timely establish an account with the State Department of Revenue and has received a unified business identifier number, and maintains a separate set of books and records for such business.

- D. Any and all employees of the Consultant while engaged in the performance of any work or services required by the Consultant under this Agreement shall be considered employees of the Consultant only and not of the City. Any and all claims that may or might arise under the Workers Compensation Act on behalf of said employees while so engaged on any of the work or services to be rendered herein shall be the sole obligation and responsibility of the Consultant.

- E. None of the services covered by this Agreement shall be subcontracted by the Consultant without the prior written consent of the City, executed by its Project Manager. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. The Consultant shall insert in each subcontract appropriate provisions requiring compliance with the provisions of this Agreement, and subcontractors shall be deemed to be bound by all the terms hereof.

XI. CONFLICT OF INTEREST.

- A. Consultant covenants that it presently has no pecuniary or proprietary interest and shall not acquire any such interests, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance

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of this Agreement no person or subcontractor having such interest shall be employed.

- B. No members of the City government, and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the Project shall have any personal interest, direct or indirect, in this Agreement.

XII. DISPUTE RESOLUTION, ATTORNEYS' FEES, AND APPLICABLE LAW.

- A. The City and the Consultant shall give each other prompt notice of any development either observes or becomes aware of which affects the scope or timing of the Project or involves any defect in the work of Consultant, or its contractors or subcontractors. In the event of material disagreements between the City's Project Manager and the Consultant's Representative arising out of this Agreement, the issue shall be addressed at meetings between the parties, which shall in such case also include at least the Project Manager and the Consultant's Representative (or equivalent), all of whom shall use their best efforts to timely resolve the dispute.
- B. In the event of litigation to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- C. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of Whatcom County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement without recourse to any principle of Conflicts of Laws.

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XIII. TERMINATION.

- A. In the event of the death of a member, partner, or officer of the Consultant, or any of its supervisory personnel assigned to the Project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement if requested to do so by the City in its sole discretion.

- B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints, and prior to its normal completion, the City may summarily terminate this Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof. Nothing herein prevents Consultant from being paid sums, duly documented, for work performed prior to termination.

- C. Should either party hereto believe that the other has failed to substantially perform all or a material part of its obligations under the Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail). In the event of termination under this subparagraph, the Consultant shall be paid an amount, in the discretion of the Project Manager, which takes into account actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, the cost to the City of completing the work itself or of employing another firm to complete it and the

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inconvenience and time which may be required to do so, along with any other factors which affect the value to the City of the Project work which has been performed to the date of termination. In no event shall the Consultant receive an amount based on anticipated profit on unperformed services or other work.

- D. Upon receipt of a termination notice, the Consultant shall promptly discontinue all services affected unless the notice directs otherwise, and shall promptly deliver or otherwise make available to the City all data, drawings, specifications, calculations, reports, estimates, summaries, and such other information and materials as the Consultant or its subconsultants may have accumulated in performing this Agreement, whether completed or in progress, and shall also make available all equipment and/or materials purchased specifically for the Project where the City has reimbursed the Consultant therefor. The City may thereafter, at its sole option, take over the work and prosecute the same to completion by whatever means it chooses. Consultant shall have the right, during the termination notice period, to complete such analyses and records as necessary to place its files in order and, when necessary for protection of its professional reputation, to produce a report of services completed to the date of termination.
- E. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

XIV. LEGAL RELATIONS AND INSURANCE.

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all City ordinances and resolutions, and federal and state grant agreements and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.

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- B. The Consultant shall defend, indemnify and hold harmless the City, its officers, employees, principals and agents from any and all injury or damage to the City or its property, and also from all claims, demands, causes of action, or suits of any kind that arise directly or indirectly out of, incident to, or due to any actual or alleged negligence, intentional tort, or breach of duty by the Consultant, its agents, employees, representatives or subcontractors in performing work and services under this Agreement, except for injuries and damages caused by the sole negligence of the City.

- C. In the event any claim, suits, or actions result from the concurrent negligence of (a) the City or the City's agents or employees and (b) the Consultant or the Consultant's agents or employees, the defense and indemnity provisions in the preceding paragraph of this section shall be valid and enforceable only to the extent of the Consultant's negligence or the negligence of its agents and employees.

- D. The Consultant specifically agrees to defend and indemnify the City from claims or suits brought by Consultant's own employees against the City. For this purpose, Consultant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts. This waiver has been mutually negotiated by the parties.

- E. The City's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

- F. Prior to execution of the Agreement, the Consultant shall file with the City appropriate evidence of insurance from insurer(s) certifying to the coverage of all insurance required herein and which will be subject to approval by the City. In the event that the Consultant is unable, through no fault or neglect, to maintain

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such insurance, the City shall have the right to terminate the Agreement pursuant to paragraph XII after giving the Consultant a reasonable opportunity to find alternate insurance coverage acceptable to the City. All insurance policies shall be endorsed to require the insurer to provide thirty days' notice of cancellation.

- G. The Consultant shall require that all subcontractors obtain and maintain comprehensive general liability, professional liability and workers compensation insurance appropriate and applicable to the scope of work and services to be performed by such subconsultants. It shall be the responsibility of the Consultant to initially determine the appropriate and applicable insurance coverage, which will be submitted to the City for approval. The Consultant shall furnish to the City insurance certificates for all subcontractors.
- H. The Consultant shall obtain and maintain the minimum limits of liability insurance set forth below. By requiring such minimum limits, the City shall not be deemed to have assessed the risks which may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems it appropriate and prudent, maintain greater limits. The insurance of the Consultant shall be primary and non-contributory with any insurance for which the City is a named insured. The City and its officials and employees shall be named as additional insureds on all liability insurance policies (together with the required endorsement), except professional liability insurance. Said insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Such policies shall provide the coverage required as follows for any and all occurrences arising out of the Consultant's performance under this Agreement:
1. Broad form Commercial General Liability, affording limits of liability of \$1,000,000.00 per occurrence for bodily injury, personal injury, and property damage and \$2,000,000.00 in the aggregate.

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2. Automobile liability affording limits of liability of \$1,000,000.00 as a combined single limit per accident for bodily injury and property damage.
3. Professional liability insurance, affording limits of liability of \$1,000,000.00 in the aggregate covering all professional activities performed under this Agreement. If the insurance maintained by the Consultant is maintained on a "claims made" basis rather than an occurrence basis, said insurance shall be continued by the Consultant until at least five years after the date of the completion of the Project.
4. Workers Compensation coverage as required by the laws of the State of Washington.

Except with regard to Professional Liability Insurance and Workers Compensation coverage, all insurance coverages required under this Agreement shall include a waiver of subrogation against the City for losses arising from work performed by the Consultant.

- XV. ASSIGNMENT.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the prior, express written consent of the City.
- XVI. ENDORSEMENT ON PLANS.** If this Agreement involves design for a construction project, the Consultant shall place the endorsement of a licensed engineer or architect on all plans, specifications, estimates or any other design data Consultant furnishes. In any event, all materials prepared by the Consultant hereunder are property of the City, and Consultant retains no right of ownership or copyright therein.
- XVII. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES:** The Consultant agrees that it will comply with all State and local non-discrimination laws and regulations in effect at the time this Agreement is executed. The Consultant shall comply with all Federal non-discrimination laws and regulations if any of this Agreement is financed with Federal funds.

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- XVIII. COMPLIANCE WITH LOCAL LAWS:** The Consultant shall be duly licensed (including Business Registration with the City of Bellingham) and shall comply with all applicable laws, ordinances, and codes of the State and local governments.
- XIX. EFFECT OF ACCEPTANCE OF THE WORK.** Approval of plans, specifications or other documents shall not constitute nor be deemed a release of the responsibility of the Consultant, its employees, subcontractors, or agents for the accuracy and competency of their work, nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the work prepared by the Consultant, its employees, subcontractors, or agents.
- XX. ACCOUNTING AND AUDIT:** The Consultant agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.
- XXI. NOTICE.** Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth herein below:

City: City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Attn:

Consultant:

Attn:

- XXII. ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes all other prior written or oral understandings. This

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Agreement may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Agreement.

EXECUTED, this _____ day of _____, 2021, for the Consultant.

Authorized Signature

Printed Name and Title

EXECUTED, this _____ day of _____, 2021, for the **CITY OF BELLINGHAM**:

Departmental Approval:

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

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EXHIBIT A
TO AGREEMENT FOR CONSULTANT SERVICE
SCOPE OF WORK

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EXHIBIT B
TO AGREEMENT FOR CONSULTANT SERVICES

PROJECT TIMELINE
&
PAYMENT SCHEDULE

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EXHIBIT C
TO AGREEMENT FOR CONSULTANT SERVICES
ADDITIONAL CONTRACT TERMS AND CONDITIONS

I. TRAVEL AND OTHER EXPENSES. If business travel & other expenses are authorized, the following additional terms and conditions apply:

Travel & Other Expenses. The City shall reimburse Consultant for reasonable travel and specifically negotiated expenses incurred by Consultant, its officers, employees, agents and contractors in connection with performance of the services as agreed to by the City and Consultant, which have been outlined in the scope of work. Any such expenses shall adhere to IRS published rates located at: www.gsa.gov and be shall be subject to the following guidelines:

1. No mark-ups of reimbursable expenses for primary and sub-contractors will be paid by the City. Mark-ups are when a certain percentage is added to reimbursable expenses.
2. Meal reimbursement is to be paid at published IRS Per Diem rates (covering breakfast, lunch and dinner only) in effect at the time of expenditure. Gratuities may be added to the Per Diem cost but may not exceed 20% of the pre-tax total. No alcohol is authorized.
3. Airfare shall be regular coach. No upgraded tickets are authorized.
4. Lodging should reflect the corporate or government rate for single room for one person. In general, lodging costs should be limited to rates that would be available to stays at Bellingham hotels of a mid-range (three stars) or less.
5. No entertainment expenses are authorized, such as in-room movies, sporting or theatrical events tickets.
6. To be eligible for reimbursement, any request expenses (except per diem meals) must be supported by receipts and supporting documentation outlining the details of the expense, per standard accounting practice (GAAP).