



CITY OF BLAINE

REQUEST FOR STATEMENT OF QUALIFICATIONS

MUNICIPAL ENGINEERING SERVICES

REFERENCE NUMBER: PW-ENGG-2024-2026

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1.0 INTRODUCTION

1.1 PURPOSE

The purpose of this SOQ is to invite Statements of Qualifications (SOQ) from firms interested in being selected as the City's "Engineering Consultant" for professional municipal engineering and land surveying services during the 2024, 2025 and 2026 calendar years. The City may select a consulting engineering firm or develop a consulting engineering roster (based on the firm's qualifications) for various municipal engineering services. Design, plans, specifications, and services during construction for street and utility improvements may include projects funded by State and Federal dollars.

The City will use the qualifications to develop an engineering consultant roster for the municipal projects related to following:

- City of Blaine's Water & Sewer Infrastructure Improvement and Planning projects;
- City of Blaine's Street Improvement projects;
- City of Blaine's Parks improvement and Planning projects (Landscaping & Architect Services); and
- General Engineering Services including but not limited to traffic studies, hydrogeological studies, developing funding applications and land surveying services.

Proponents are welcome to submit the firm's qualifications for multiple/all the items described above or for specific item that best fits with the type of consulting firm.

1.2 DEFINITIONS

In this SOQ the following terms will have the meaning set out below:

- (a) "**Closing Date and Time**" has the meaning set out in section 2.2;
- (c) "**Contract**" means a formal written contract between the City and a Preferred Proponent to undertake the Services;
- (d) "**Evaluation Team**" means the evaluation team appointed by the City;
- (e) "**Preferred Proponent(s)**" means the Proponent(s) selected by the Evaluation Team to enter into a Contract;
- (f) "**Proponent**" means an entity that submits a Proposal;
- (g) "**Proposal**" means a proposal submitted in response to this SOQ;
- (h) "**SOQ**" means this Statement of Qualifications;
- (i) "**City**" means City of Blaine;
- (j) "**City Representative**" means a City employee.

2.0 INSTRUCTIONS TO PROPONENTS

2.1 PROPOSAL SUBMISSION

All Proponents must submit the proposals electronically via email: mkaur@cityofblaine.com to Manroop Kaur and the subject line should clearly state: "Reference Number: Request for Statement of Qualifications" in by the closing date and time as set out in section 2.2.

2.2 CLOSING DATE AND TIME

The Proponent should submit their Proposal **on or before the following date and time:**

Time: 5:00 pm, local time
Date: October 13, 2023

(the "Closing Date and Time").

Proponents are cautioned the timing of their Proposal submission is based on when the Proposal is successfully **RECEIVED** by the City, **not** when the Proposal is submitted by the Proponent, as a Proposal transmission can be delayed.

For the above reasons, it is recommended Proponents allow sufficient time to transmit their Proposal submission and to resolve any issues that may arise.

Proponents will be notified with confirmation email after the City receives the proposal.

2.3 LATE PROPOSALS

Late submittals will not be accepted. Fax submittals will not be considered. The City accepts no responsibility for any misdirected documents.

2.4 INQUIRIES

Questions related to this SOQ are to be submitted in writing via email to Manroop Kaur at mkaur@cityofblaine.com. No verbal inquiries will be entertained.

Inquiries should be made no later than four [4] working days before Closing Date and Time. The City reserves the right not to respond to inquiries made within four [4] working days of the Closing Date and Time. Inquiries and responses will be recorded and may be distributed to all Proponents at the discretion of the City.

Proponents finding discrepancies or omissions in the SOQ or having doubts as to the meaning or intent of any provision, should immediately notify the City Representative. If the City determines that an amendment is required to this SOQ, the City Representative will issue an addendum in accordance with section 2.5. No oral conversation will affect or modify the terms of this SOQ or may be relied upon by any Proponent.

2.5 ADDENDA

If the City determines that an addendum is required to this SOQ, the City will issue a written addendum through the [City website](#) prior to Closing Date and Time that will form part of this SOQ. No addenda of any kind to the SOQ are effective unless it is contained in a formal written addendum that the City issues.

Proponents shall acknowledge receipt of any addenda when submitting their Proposal. It is the responsibility of the Proponent to have received all addenda that are issued. Proponents should check City website prior to submitting their Proposal. Addenda, if any, will be issued only up until three business days before the Closing Date and Time. If a Proponent submits their Proposal three days prior to the Closing Date and Time and an addendum is issued, the Proponent can **WITHDRAW** their submission via written email notice to Manroop Kaur (mkaur@cityofbaline.com). The Proponent can then re-submit the revised proposal. The Proponent is solely responsible to:

- i) make any required adjustments to their submission;
- ii) acknowledge the Addenda; and
- iii) ensure the re-submitted proposal is **RECEIVED** by the City no later than the stated Closing Date and Time.

2.6 WITHDRAWAL / EDIT SUBMISSIONS

Proponents may withdraw or edit their submission prior to the Closing Date and Time. However, the Proponent is solely responsible to ensure the re-submitted Proposal is received by the City no later than the stated Closing Date and Time.

2.7 OPENING OF PROPOSALS

Proposals will not be opened in public.

2.8 STATUS INQUIRIES

All inquiries related to the status of this SOQ will be conducted via email and will be directed to Manroop Kaur at mkaur@cityofbaline.com.

3.0 PROPOSAL SUBMISSION FORM AND CONTENTS

3.1 FORM OF PROPOSAL

All submittals shall be in electronic PDF file format and attached to an email with the email. The submittal shall include:

- a one page "Cover Letter" signed by the proponent, as included in **Schedule A** to this SOQ;
- clearly identified sections addressing: key personnel; firm experience with municipal engineering plans, specifications, and cost estimates, and environmental/permitting processes; familiarity with City of Blaine and/or similar municipalities; experience with the state and federal funding programs and regulatory agencies; and past performance/references (five municipal projects as example).

SOQs shall be limited to 20 pages excluding cover letter. The font size shall be no smaller than 12 pt.

Resumes can be attached as appendices and will not contribute to the page count.

3.2 CONTRACT

The City's sample form of Contract for the professional services is included **Schedule B** to this SOQ. The Preferred Proponent will be required to enter similar contract for their services.

3.3 SIGNATURE

Proposals should be submitted by a person authorized to sign on behalf of the Proponent and bind the Proponent to statements made in the Proposal.

4.0 EVALUATION AND SELECTION

4.1 EVALUATION TEAM

The evaluation of Proposals will be undertaken on behalf of the City by the Evaluation Team, which may consist of one or more persons. The Evaluation Team will give a written recommendation for the selection of a Preferred Proponent or Preferred Proponents to the City.

4.2 EVALUATION CRITERIA

The Evaluation Team will compare and evaluate all Proposals to determine the Proponent's strength and ability to provide the Services in order to determine the Proposals which are most advantageous to the City.

The Proposals will be evaluated on, in no particular order, the following criteria: key personnel; firm experience with plans, specifications, and cost estimates, and environmental/permitting processes; familiarity with City of Blaine and/or similar municipalities; experience with the state and federal funding programs and regulatory agencies; past performance/references; and ability to perform work within budget.

4.3 ADDITIONAL INFORMATION

The Evaluation Team may, at its discretion, request clarifications or additional information from a Proponent with respect to any Proposal, and the Evaluation Team may make such requests to only selected Proponents. The Evaluation Team may consider such clarifications or additional information in evaluation of a Proposal.

5.0 GENERAL CONDITIONS

5.1 NO CITY OBLIGATION

This SOQ is not a tender and does not commit the City in any way to select a Preferred Proponent, or to proceed to negotiations for a Contract, or to award any Contract, and the City reserves the complete right to at any time reject all Proposals, and to terminate this SOQ process.

5.2 PROPONENT'S EXPENSES

Proponents are solely responsible for their own expenses in preparing and submitting Proposals, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from this SOQ.

5.3 NO CONTRACT

The City and its representative, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this SOQ.

5.4 NO CLAIMS

The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this SOQ.

5.5 OWNERSHIP OF PROPOSAL AND FREEDOM OF INFORMATION & PROTECTION OF PRIVACY ACT

All submissions become the property of the City and will not be returned to the Proponent. Proponents should be aware the City is a "local" defined by and subject to the *Public Records Act* of Revised Code of Washington (RCW).

5.6 SOLICITATION OF COUNCIL MEMBERS AND CITY STAFF

Proponents and their agent will not contact any member of the City Council or City staff with respect to this SOQ, other than the City Representative named in Section 2.4, at any time prior to the award of a Contract or the termination of this SOQ, and the City may reject the Proposal of any Proponent that makes any such contact.

5.7 EQUAL OPPORTUNITY AND TITLE VI STATEMENT

City hereby notifies all bidders that City is an equal opportunity firm, and it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be offered full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Schedule A: Cover Letter

Proponent's name
Business/Organization name (if applicable)
Proponents address
City, State Zip Code

Public Works Office
1200 Yew Avenue
Blaine, WA 98230

Date: _____

Subject: SOQ Name & Reference Number:

The enclosed response is submitted on behalf of _____ (myself/business name/organization name) in response to the above-mentioned Request for Statement of Qualifications. Through submission of this document, I/we agree to all the terms and conditions of the Request for Statement of Qualifications.

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

Yours truly,

Legal name of proponent _____

Signature
Typed or printed name of proponent or representative
Title of proponent

**CITY OF BLAINE
AGREEMENT FOR PROFESSIONAL SERVICES
GENERAL CONSULTING SERVICES**

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into as of the later of the two signature dates below, by and between:

City of Blaine
435 Martin Street, Suite 3000
Blaine, WA 98230
(360) 332-8311
Fax: (360) 332-8330

(the "CITY")

AND

Name	
Address	
Telephone	
Fax	
Email	

(the "CONSULTANT")

For and inconsideration of the mutual promises and covenants contained herein the CITY and the CONSULTANT agree as follows:

- **SCOPE OF WORK:** CONSULTANT agrees to perform Services to the CITY. The specific Services will be set forth in Task Orders as described in the General Provisions herein. **See attached EXAMPLE Exhibit "A."**
- **COMPENSATION:** The CONSULTANT shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein. **See attached Exhibit "B."**
- **GENERAL PROVISIONS:** Services covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Selection. The CONSULTANT was chosen after a process that complied with all provisions of federal, state, and local law concerning selection of professional engineering services.

2. Consulting Services. CONSULTANT'S services shall meet or exceed the standard for similar services performed by licensed professionals performing work in Whatcom County, Washington.

3. Scope of Work. The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of work and/or deliverables described and specified in the Task Order(s) issued pursuant to and governed by the terms of this Agreement. A copy of the Task Order form(s) to be executed by the parties is included as Exhibit "A," attached hereto and incorporated herein by this reference. Additional Task Orders shall be attached hereto as amendments and shall be made part of this Agreement upon approval as required herein.

3.1 Services covered by this Agreement shall be performed in accordance with the provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

4. Term of Agreement. The CONSULTANT shall not begin work under the terms of this Agreement or any Task Order until the CITY has specifically authorized the CONSULTANT to do so in writing. The time required for completion of all work under each Task Order and, if appropriate under a schedule for completion of phases of the work, shall be specified in each Task Order. The completion dates for Task Orders, or for phases of work under a Task Order may be modified only upon written agreement of the parties hereto. The completion dates for Task Orders, or for phases of work under a Task Order may be, but are not required to be, extended in the event of a delay caused by Extra Work requested in writing by the CITY, or if the CONSULTANT's work is delayed by unavoidable circumstances beyond the control of the CONSULTANT and which the

CONSULTANT could not reasonably have anticipated and only if the CONSULTANT has notified the CITY in writing as soon as reasonably practicable upon learning of or experiencing such delay event.

5. Compensation and Payment. The CONSULTANT shall be compensated on the basis of the actual hours worked and actual expenses incurred by its employees at the rates shown in the attached CONSULTANT's Fee Schedule, Exhibit "B." The CONSULTANT shall receive no other payment for direct or indirect costs (e.g., office rental, office supplies, postage, telephone, fax, business insurance, office utilities, routine correspondence preparation, invoicing, or payment receipt processing and accounting), materials or disbursements unless expressly allowed by the Task Order. The CONSULTANT shall not adjust the wage rates in Exhibit "B" without written authorization from the CITY.

5.1 CONSULTANT shall supply the CITY with a monthly invoice and written documentation, satisfactory to the CITY, for all amounts due under this Agreement, including, but not limited to, project budget status and a narrative progress description of services rendered that is acceptable in form to the CITY.

5.2 Monthly invoice statements shall include the following information:

1. For direct professional services:
 - a. An itemized short description of the task performed and the specific time period,
 - b. The name(s) of the corresponding person(s) performing the task,
 - c. The corresponding hourly reimbursement rate(s) of the person(s) performing the task,
 - d. The corresponding hours, to the nearest quarter of an hour, spent performing each task,
 - e. Work task subtotal cost (hours x hourly rate), and
 - f. Subtotal for direct professional services.
2. For any other direct charges:

- a. Qualified mileage charges: A short description of the trip's purpose, date, mileage for the trip, mileage reimbursement rate, and total charge (mileage x rate).
 - b. All other charges: An itemized short description explaining the charge, the reimbursable cost, and a subtotal of all such charges.
 - c. Subtotal for indirect or other charges.
3. Any past-due amounts.
 4. Uninvoiced balance remaining on each work task.
 5. Total amount of the invoice.

5.3 City shall review these submitted invoices and make payment based thereon for work completed to City's satisfaction. City shall pay Consultant all undisputed amounts within 30 days of receipt of Consultant's invoice. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Task Order. City shall promptly notify Consultant of any disputed invoice amounts.

5.4 If a Task Order specifies that the work is to be performed on a fixed fee basis, the CONSULTANT shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the work regardless of the CONSULTANT's cost to perform the work. The CITY shall have sole authority for determining when all work has been satisfactorily performed by the CONSULTANT. The CONSULTANT's payment for the work shall not exceed the specific amount unless authorized in writing by the CITY, as provided herein. The fixed fee amount comprises all of the CONSULTANT's payment for the work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone, supplies, and fees of outside CONSULTANTS), as well as the CONSULTANT's profits. The CONSULTANT's payment for the work shall not exceed the specified amount unless first authorized by the CITY.

5.5 No mark up or added overhead, profit, administrative fee or other mark up of any type shall be added to any invoice for a Subconsultant

submitted to the City for payment.

5.6 The CONSULTANT shall obtain the prior written approval of the CITY for any charges for additional services by the CONSULTANT, the additional services of others retained by CONSULTANT, or the furnishing of additional supplies, materials or equipment. See also section 8, below. The CONSULTANT shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

5.7 Reports and Information. Consultant, at such times and in such forms as City may require, shall furnish City such reasonable periodic reports and documents as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Agreement.

Consultant will maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoiced amounts. All plans, drawings, reports, specifications, data, information or other documents provided to Consultant and/or prepared or assembled under this Agreement are and shall remain the sole property of City. Consultant shall retain all such documentation generated in conjunction with the undertaking of the Project, and Consultant shall, upon completion, termination, expiration and/or conclusion of the Project, provide same to City.

6. **Payment of Sub-Consultants.** At the time of project completion, the CONSULTANT agrees to certify, in writing, to the CITY that all employees (including without limitation any union fees and any benefit plans), and Subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such certification by the CITY; the CITY may, in its sole discretion, withhold final payment until receipt of such certification. The CONSULTANT shall be solely responsible for the performance and payment of any and all Subconsultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington, the City of Blaine and by this Agreement as if the sub-consultant(s) were the CONSULTANT, including without limitation a City of Blaine business license.

7. **Termination.** This agreement will be terminated on **December 31, 2026**. If more time is required to complete the services under any specific open Task Order, City will consider extending the termination date to complete the open Task Order. Such an amendment will be issued in writing by the City before the termination date.

This Agreement may be terminated by either party upon thirty (30) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the CONSULTANT, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the CITY. In the event of termination for default, the CONSULTANT shall be compensated for satisfactory services performed to the termination date by reimbursement of the CONSULTANT's actual costs directly related to the project plus normal overhead and reasonable profit. The CITY shall have sole authority for determining when all work has been satisfactorily performed by the CONSULTANT. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the CITY. Any work product generated by the CONSULTANT prior to such termination shall be the sole property of the CITY, and the CONSULTANT agrees to provide the CITY with all such materials. If the accumulated payment made to the CONSULTANT prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due and the CONSULTANT shall promptly reimburse the CITY for the excess paid.

7.1 Further, this Agreement may be terminated by the CITY at any time for any reason whatsoever, at the sole discretion of the CITY, with seven (7) days' written notice. If the CITY terminates for convenience, the CITY will pay according to the payment terms as provided in Paragraph 5, above. If, after termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT has not so failed, the termination shall be deemed to have been effected for the convenience of the CITY.

7.2 In addition to the above, the CITY reserves the right to suspend all or any portion of the work and services for CONSULTANT's default or CITY's convenience. If the CONSULTANT's work is delayed for more than thirty (30) calendar

days due to circumstances for which the CONSULTANT is responsible, the CITY may find the CONSULTANT in default and terminate the Task Order and/or this Agreement.

8. **Deviations from Scope of Work.** The CITY may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affect any other provision of this Agreement, the CONSULTANT shall immediately notify the CITY and take no further action concerning those written directions. No additional work shall be performed or charges incurred unless and until the CITY approves in writing the change of work and the increased cost thereof through a written contract modification or by issuance of a new task order by the CITY. Any work done in violation of this paragraph shall be at the sole expense of the CONSULTANT. Additionally, the CITY reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 5.6 is not exceeded.

8.1 The CONSULTANT shall make all revisions and changes in the completed work under this Agreement as are necessary to correct the CONSULTANT's, and those of its sub-consultants errors or omissions, without additional compensation from CITY.

9. **Insurance.** The CONSULTANT, concurrently with the execution of this Agreement, shall provide the CITY with evidence that the CONSULTANT has obtained and is maintaining the insurance listed as follows:

9.1 Workers' Compensation Insurance as required by law.

9.2 Employers' Liability Insurance (bodily injuries) with a limit of not less than One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in all states where the CONSULTANT will have employees located in the performance of its work covering its common law liability to such employees.

9.3 Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or in behalf of CONSULTANT with a One Million Dollar (\$1,000,000) combined single limit for bodily injury and/or property

damage per occurrence and an annual aggregate limit of \$2,000,000.

9.4 Professional Liability Insurance covering Errors and Omissions of the CONSULTANT in the amount of not less than One Million Dollars (\$1,000,000) per claim and an annual aggregate limit of \$2,000,000.

9.5 Except with regard to the Professional Liability Insurance and statutory workers compensation insurance, each of the policies required herein shall name the CITY as an additional insured. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the CITY except upon thirty (30) days' prior written notice from the insurance company to the CITY; (iii) contain an express waiver of any right of subrogation by the insurance company against the CITY and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the CONSULTANT which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to the CONSULTANT and the CITY.

9.6 With regard to the Professional Liability Insurance, the CONSULTANT shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.

9.7 The CONSULTANT shall furnish the CITY with copies of Certificates of Insurance evidencing policies of insurance required herein, including copies of the insurance policies required to be provided by a sub-consultant. The CONSULTANT shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The CITY's failure to request such certificates shall not relieve the CONSULTANT of the obligation to provide them.

9.8 The CONSULTANT shall maintain the insurance in effect at all times that it is performing work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the CITY to find the CONSULTANT in default and terminate the Agreement accordingly. Alternatively, the CITY may at its option purchase

such insurance and deduct the reasonable expense therefore from payments made to or owing to the CONSULTANT.

10. **CONSULTANT Not an Agent or Employee of the CITY.** In performing work and services hereunder, the CONSULTANT and CONSULTANT's employees, agents, and representatives shall be acting as independent CONSULTANTS and shall not be deemed or construed to be partners, employees or agents of the CITY in any manner whatsoever. No employee of the CONSULTANT shall be considered an employee of the CITY even while performing work required under this Agreement. Furthermore, the CONSULTANT shall not hold itself out as, nor claim to be, an officer or employee of the CITY by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY.

11. **Conflict of Interest.** CONSULTANT covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its Sub-consultants.

12. **Compliance With Applicable Law.** The CONSULTANT shall comply with all the CITY's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable CITY's resolutions, federal, state or local laws, regulations or ordinances during the performance of the work affect the cost of performing the work. The CONSULTANT shall register (and shall require the same of all Subconsultants), if and as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the CITY. By executing this Agreement, the CONSULTANT further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this Agreement that it will include this clause without modification in all lower tier transactions, solicitations,

proposals, agreements, contracts, and subcontracts. Where the offeror/CONSULTANT or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The CITY reserves the right to require the CONSULTANT to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirement.

13. **Warranty**. Consultant warrants that their services will conform to the standard of care applicable to the professional services covered by this Agreement, and that they shall be performed with the degree of skill and diligence normally employed by professional consultants performing the same or similar work under similar circumstances. For example, should the consultant be providing professional engineering or architectural services, such services shall conform to the applicable standard of care for such licensed professionals.

In the event of a default hereunder, or in the event that Consultant fails to perform the Project work in conformance with the standard of care set forth in this Agreement, including this section, then the City may, in addition to exercising all of those rights and remedies available to it in law and equity, (i) terminate the Contract, (ii) cure any defect arising from Consultant's negligence, recklessness or willful misconduct and charge the cost of such repair back to Consultant, and/or (iii) seek specific remedial performance under the Contract at no additional cost to City. The remedies provided for herein and in this Agreement are cumulative. Consultant shall be given at least seven working days written notice of such failure to conform to the standard of care and a reasonable time to cure such failure.

14. **Indemnity**. The CONSULTANT shall defend indemnify and hold harmless the CITY, its officers, employees, and agents from any and all demands, claims demands, claims, judgments, costs (including expert witness fees) or liabilities arising from and to the extent caused by any negligent act or omission of the CONSULTANT or its directors, officers, agent or employees in execution the work, except to the extent that such negligence is caused by the sole negligence of the City. Without limiting the generality of the foregoing, the parties agree that this defense and indemnity obligation shall obligate the CONSULTANT to pay any and all attorney fees and expenses incurred by the

CITY or its representatives in the defense of any claim or suit covered by this paragraph, whether or not such claim is successful. In this regard, the CITY will reasonably cooperate with CONSULTANT in allowing CONSULTANT to jointly select, with the CITY, attorneys to defend the CITY so long as the CONSULTANT agrees to pay the cost of such a defense. At the conclusion of the matter, the CITY and the CONSULTANT will reasonably apportion attorney fees and cost on the basis of respective fault as determined in the action. In the case of a settlement this issue of attorney fees will be reasonably determined as between the CONSULTANT and the CITY prior to the settlement in order for the CONSULTANT to receive any reimbursement and then only to the extent such costs and fees are not covered by insurance. Pursuant to Title 51 RCW, the CITY and the CONSULTANT expressly waive any defense as between them arising from Title 51 RCW and state that this provision was mutually negotiated by the parties.

15. **Work Product Confidentiality**. Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the CITY requests to be kept confidential shall not be made available by the CONSULTANT to any individual or organization without prior written approval of the CITY except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the CITY or other documents produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

16. **Public Records Requests**. Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Records Act (RCW 42.56 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to

provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.56 *et. seq.* so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

17. **Plans, Etc. Property of CITY.** All work performed under this Agreement is work for hire. All drafts and all deliverables, including, but not limited to, original plans, drawings and specifications, prepared by the CONSULTANT and any and all sub-consultant for the CITY and funded by the CITY are and shall remain the property of the CITY under any and all circumstances. This shall not apply to proprietary software or documentation that may be provided to the CITY and that was developed independent of funding by the CITY, provided that such proprietary documentation is identified as such prior to or with the first delivery of such documentation to the CITY. The CONSULTANT assumes no liability for any use of any plans other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the CONSULTANT and funded by the CITY, shall become the property of the CITY. No reports, records, questionnaires, software programs provided by CITY or other documents produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or on behalf of the CONSULTANT or any Subconsultant. Upon the satisfactory completion of the work, the CONSULTANT may seek permission from the CITY to use the final deliverable for the purpose of specific marketing efforts provided that the CONSULTANT which shall not be unreasonably denied The CONSULTANT's work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

18. **Electronic File Compatibility.** All electronically- transmitted output must be compatible with existing CITY software, and shall be provided to the CITY in an appropriate electronic format as directed by the CITY. Any computer automated dispatch (CAD) deliverables shall be consistent with the CITY's standard CAD layering system, as provided by the CITY to the CONSULTANT. CONSULTANT shall check with the CITY for software application, system compatibility and preferred file type.

19. **Non-Discrimination.** In connection with the

performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran or a member of any other protected class. The CONSULTANT shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

20. **Federal Restrictions on Lobbying.** The CONSULTANT certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

21. **Federal Debarment and Suspension.** The CONSULTANT certifies, that neither it nor its "principals" (as defined in 49 CFR.29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

22. **Subletting or Assigning of Agreement.** The CONSULTANT shall not sublet or assign any of the work covered by this Agreement without the express written consent of the CITY.

23. **Notices.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed above. All notices and payments mailed, whether sent by regular post or by certified

or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided below, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

24. **Review of Title Documents.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the CITY. The CONSULTANT shall not execute or record (or make to be executed or recorded) any such document prior to the CITY's review and approval.

25. **Litigation/Venue/Arbitration.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Whatcom County and shall be subject to section 25.1, below. Except as provided in Paragraph 12, in the event of any other dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney's fees and costs.

25.1 Arbitration. In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys' fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys' fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select or cannot agree upon an arbitrator within this time, then they shall make application to the Superior Court of Whatcom

County, pursuant to RCW 7.04A et seq., for an order appointing an arbitrator. Such application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. RCW Chapter 7.04A and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between this Arbitration section, RCW Chapter 7.04A, and MAR 5.2 through 5.4, the terms of this Arbitration section shall take precedence over RCW Chapter 7.04A and MAR 5.2 through 5.4; and RCW Chapter 7.04A shall take precedence over MAR 5.2 through 5.

26. **Pollution.** The CITY acknowledges that the CONSULTANT is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the CONSULTANT. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The CONSULTANT will promptly notify the CITY of contamination conditions, if identified. Notwithstanding the foregoing, the CITY does not herein waive any cause of action for damages resulting from the CITY's reliance on any misrepresentation (made either knowingly or negligently) by the CONSULTANT with regard to the presence of any contamination or pollution.

27. **Entire Agreement.** This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The CONSULTANT specifically understands that no CITY employees other than the Project Manager or his/her supervisors are authorized to direct the work of the CONSULTANT.

28. **Signing Authority.** Anyone signing this

Agreement by said signature certifies that he/she has the authority to execute said document on

behalf of the CONSULTANT and that his/her signature is binding upon the firm or corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this Agreement, which shall be binding upon the parties according to its terms.

CONSULTANT:

AUTHORIZED SIGNER, TITLE

Date

CITY OF BLAINE:

Michael Harmon, City Manager

Date

DEPARTMENTAL APPROVAL:

Harpiar Gandhi, Public Works Director

Date

ATTEST:

Samuel Crawford
City Clerk

Date

EXHIBIT - A
SAMPLE TASK ORDER – TO BE USE WITH EACH NEW TASK
City of Blaine
PROJECT/TASK NAME
Task Order #2023-XX

This Task Order is authorized under the Agreement for Professional Services between City of Blaine and "CONSULTANT" effective INSERT DATE OF ORIGINAL AGREEMENT,.

(A) Scope of Work

(B) Deliverables

(C) Schedule

(D) Fee Basis

The Services indicated above are to be billed on a time and expense basis, not to exceed \$xx,xxx. The City may authorize additional supporting or subsequent services on a time and expense basis as confirmed by email to the CONSULTANT'S Project Manager.

CONSULTANT:

AUTHORIZED SIGNER, TITLE Date

CITY OF BLAINE:

Michael Harmon, City Manager Date

DEPARTMENTAL APPROVAL:

Harpiar Gandhi, Public Works Director Date

City Project Lead Date

ATTEST:

Samuel Crawford Date
City Clerk

EXHIBIT B
CONSULTANT'S FEE SCHEDULE

This Exhibit B sets forth the agreed upon schedule of hourly rates and other charges and disbursements the CITY is agreeing to pay the CONSULTANT. This should identify all job classifications, reimbursable expenses, and sub-consultant mark-ups.

SAMPLE