



**CITY OF SPOKANE VALLEY
Public Works Department**



**REQUEST FOR QUALIFICATIONS (RFQ) #11-032
Consultant Services for Spokane Valley – Millwood Trail**

November 11, 2011

Publication dates November 10, 11 and 18, 2011

SUBMITTAL DEADLINE

4:00 PM (local time), Friday, December 9, 2011

SUBMIT

Original plus six (6) duplicate copies to:
City of Spokane Valley
Public Works Department
11707 E. Sprague Avenue, Suite 106
Spokane Valley, Washington 99206-6124

PROJECT CONTACT

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caldworth@spokanevalley.org

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REQUEST FOR QUALIFICATIONS

INTRODUCTION: The City of Spokane Valley was recently awarded Transportation Enhancement funding for the planning and design of the Spokane Valley - Millwood Trail. This will be a joint project with the City of Spokane and City of Millwood.

The intent of this RFQ is to select a consultant with the best qualifications to provide professional planning services; preliminary engineering; surveying; environmental permitting; and 30% design for the Spokane Valley – Millwood Trail. In addition, the City reserves the right to include an option in the Consultant Services Agreement that would allow the same Consultant chosen to complete the preparation of bid ready plans and specifications; research, negotiate, and assist in purchase of required right-of-way or easements; assist in project bidding and award; and to provide construction administration and inspection services. The City currently has funds for planning and design only. The City may only award work on services through the 30% design engineering.

PROJECT DESCRIPTION: The Spokane Valley – Millwood Trail will be a paved shared use trail for bicycles and pedestrians. It will extend from the Spokane Community College campus to the Spokane Valley Mall and the Centennial trail. Most of the proposed trail alignment is within the abandoned Great Northern Right-of-Way currently owned by Spokane County.

PROJECT FUNDING: This project has funding through a \$745,000 FFY 2010-2012 Surface Transportation Program (Enhancement) grant for planning and design. The grant does not fund construction.

PHASE 1 SCOPE OF SERVICES: The project activities will require working with staff from the City of Spokane Valley (project lead), and a Project Advisory Committee (PAC) consisting of representatives from the City of Spokane, City of Millwood, Spokane County and other stakeholders. The City anticipates that the scope of work may include, but not be limited to, any or all of the following listed activities:

- Identify and evaluate the feasibility of path route alternatives.
- Recommend trail cross section, width, surface material, fencing locations, trailheads, rest areas, intersection treatments, etc.
- Research current and historical right-of-way ownership, easements, license agreements, and utility use in relation to the County ownership and abandonment of the corridor by the railroad.
- Develop a public outreach program to ensure community involvement.
- Conduct open houses and meetings with the community and Project Advisory Committee (PAC).
- Coordinate with the Union Pacific Railroad and Burlington Northern Santa Fe Railroad to address trespass, maintenance access, liability, safety, and right-of-way issues in relation to the trail.
- Work with local Community College and School Districts on the trail route through existing school campuses.
- Coordinate with Spokane Transit Authority on connecting to bus routes and routing the path through the Mirabeau Park n Ride lot.
- Work with local governmental utility departments on existing sewer main and water main requirements and impacts to trail location.
- Work with local power and communications utilities on existing and proposed underground and overhead transmission line locations and interactions with the trail.
- Work with local water districts on existing water main requirements and impacts to trail location.
- Recommend a trail crossing design for each arterial street crossing including signals, pavement marking and signage.
- Prepare a report with a recommended path alignment, path section, arterial crossing configurations, landscaping, and path amenities. The resulting plan should adhere to the current multi-use trail guidelines recommended by WSDOT, AASHTO, FHWA, MUTCD and ITE when appropriate. The consultant recommendations should utilize the most current rails-with-trails research, lessons learned, and best practices for design.

- Develop an outline listing mileposts and timeline to complete all necessary environmental permitting such as JARPA, SEPA and NEPA in accordance with Federal Grant Requirements in compliance with local jurisdiction Shoreline Management regulations.
- Present project plans to the Planning Commission and City Council as needed.

PHASE 2 SCOPE OF SERVICES: After the Project Advisory Committee has reviewed the preliminary design report and the recommended alignment, the consultant may begin the following activities:

- Create a topographic survey of the recommended alignment.
- Conduct geotechnical investigations where needed to establish trail design parameters.
- Conduct cultural resource survey of alignment.
- Conduct Environmental Site Assessment.
- Prepare 30% plans of the recommended alignment including trail section; appurtenances; arterial crossings; signage, and landscaping.
- Prepare, submit, monitor, (amend as necessary) and complete all required environmental permitting such as JARPA, SEPA and NEPA in accordance with the Federal Grant in compliance with local jurisdiction Shoreline Management and other pertinent regulations.
- Recommend construction phasing and develop planning level cost estimates for phased improvement projects.
- Present project plans to the Planning Commission and City Council as needed.
- Present project plans to the public as needed.
- Prepare 30% project report discussing alignment; projected use; patch section; trail accessories; arterial crossing designs; utility coordination and access;

SCHEDULE:

The schedule shall be developed during project scope negotiations.

Begin project	February 1, 2012
Final submittal of 30% Design Plans and Report	March 1, 2014

REFERENCE DOCUMENTS: Documents useful in learning about the work accomplished to date and developing a proposal can be found at www.spokanevalley.org. and click on the “Public Notices Bids / RFPs / RFQs” tab in the lower right hand corner.

PERFORMANCE OF SERVICES: The City intends that the firms awarded a contract will perform the work commencing upon the notice to proceed and terminate upon project completion unless terminated sooner with written notification by the City. The designation of firms as “most highly-qualified” by the City is not intended to be nor will it be a guarantee that all professional services required by the City, appropriate to a firm of its type, will be exclusively performed by that firm. The City retains the right to award work, on this or any other projects, to other firms.

CONTRACT: The City’s proposed contract, with the terms and conditions, is attached to this Request for Qualifications as Attachment C. Please note that the City expects all submitting firms to consent to the City contract, terms and conditions, and does not anticipate agreeing to any modifications or exceptions. Any exceptions or modifications to the contract proposed by a firm must be noted in the proposal submittal. The City reserves the right to revise the stated contract terms and conditions prior to contract signature.

CONSULTANT SELECTION SCHEDULE : *(The following dates are tentative and are subject to change.)*

1. Evaluate applications the week of Dec 12th, 2012.
2. Interview finalists the week of Jan 9th, 2012.
3. Designation of the most highly-qualified firm the week of Jan 16th, 2012.

SELECTION PROCESS: A recommendation committee will review all submittals based on the evaluation criteria set forth in this packet. The committee will likely include representation from the City of Spokane and City of Millwood. The ranking will be based solely on the written response to the evaluation criteria and consultant experience on previous City projects. Interviews may be required but are not a mandatory part of this process. The recommendation committee will be the sole judge in the determination of the most highly-qualified firm. The project will be awarded to the highest ranked firm.

INTERVIEWS: Interviews will be held for the top submittals. Firms selected for interviews should plan to have key personnel on their interview teams who will be assigned to the work on the proposed project. Interviewing firms may be asked to provide supplemental or additional information for review by the committee prior to the interviews.

The City reserves the right to utilize new or revised evaluation criteria and weights to be used in evaluation of the firms being interviewed. If changes are made to the criteria or weights they will be reduced to writing and be sent to the interview candidates prior to the conduct of the interviews.

Committee members will use the applicable evaluation criteria and weights to evaluate interview information. Previous clients may be contacted as part of the evaluation process. The recommendation committee will rank the firms for selection of the most highly-qualified firm.

ADDENDA: All official clarifications or interpretations of the documents will be by written addenda issued by Spokane Valley. Clarifications or answers to questions given verbally by Spokane Valley during the submittal process will be considered informal and unofficial. The City is not responsible for oral interpretations. Notification of any apparent discrepancies, omissions, or doubt as to meaning found in this document should be submitted in writing to the person designated to receive administrative questions.

Acknowledge receipt of addenda in Attachment A, Part 1D. Failure to provide acknowledgment may result in the submittal being rejected as not responsive.

CONFIDENTIALITY: Firms responding to this Request For Qualifications (RFQ) are hereby put on notice that Spokane Valley will regard submittals as public records which will be available for public inspection and/or copying, subject to the public disclosure requirements of RCW Chapter 42.56, after selection of a Firm is made regardless of any markings or notices contained in the submittal documents. Therefore, if these terms are not acceptable, a Firm should not respond to this RFQ.

GENERAL CONDITIONS: This RFQ does not commit Spokane Valley to award a contract or to pay any costs incurred in preparing a submittal or to procure or contract for services or supplies. Spokane Valley reserves the right not to select any firm(s) for the services based on this RFQ, to accept or reject any or all submittals, or to cancel, at its discretion, this RFQ at any time.

The selection of firms as the most highly-qualified to perform the work of this RFQ is not intended nor will it in any way be construed or considered to be a contract or an exclusive guarantee to furnish professional services associated with this project or any other work suitable to a firm of its type.

After development of the list of most highly-qualified firms, the City will determine which project or projects will be awarded to individual firms. A statement of work and price for services will be negotiated between the City and the firm. If an agreement cannot be reached with the selected firm, negotiations will be terminated and the next most qualified firm will be contacted for contract negotiations. No work will be undertaken without a mutually-agreed upon statement of work, fee, and contract signed by the parties.

Any contract awarded will be nonexclusive and if it be in the City's best interest, it may award work to other firms. Any

contracts resulting from this RFQ will be between the City and the provider of services and may be canceled upon written notification by the City.

This project is federally funded. Federal EEO requirements apply. The following applies to this project: The City of Spokane Valley, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all submitters that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit qualifications in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

INSURANCE: The consultant will be required to carry, for the duration of any contract resulting from this RFQ, the insurance types and amounts as set forth in Attachment C – Draft Agreement for Professional Services.

EVALUATION COMMITTEE: Typically evaluation committees try to review all submittals at one sitting in order to facilitate continuity, which helps improve the consistency of the individual scoring. Due to the number of firms that typically respond and a limited amount of time available for review it is strongly recommended that the response be concise and to the point. The response should be structured in order to make it easy for the committee to evaluate the firm's professional capabilities and experience.

SUBMITTAL: The submittal response consists of the following items which should be submitted in the following order:

Item 1: Cover letter (optional but not required).

Item 2: Attachment A – Part 1, General Information Sheet and receipt of addenda acknowledgment. To facilitate identification of the submission please use this sheet, or reproduction, as the very first sheet behind the cover sheet on the inside of all document copies.

Item 3: Attachment A – Part 2, Administrative Information.

Item 4: Attachment B – Responses to the evaluation criteria in Attachment B. Use Attachment B as the presentation outline. Respond to all items. The short statements following each item are offered as starting points only. Respondents are to add additional information required to more fully develop their responses so that the response makes sense for this project. Index your responses to each item if you do not use the format of Attachment B as your outline. Answer each item fully, completely and concisely.

Submissions will become part of the official records for this request for professional qualifications and cannot be returned.

FORMAT AND BINDING: Submittals shall be limited to 20 single-sided pages (8 ½" x 11") excluding cover letters, Attachment A, and personnel resumes. Personnel resumes should be no longer than one page. Type size for text should be at least 10-points. Data submitted should be bound or stapled in a single volume. Bulk must be kept to an absolute minimum. **Any material submitted for consideration must be incorporated in each response copy. A single set of material will not be reviewed.**

PACKAGING: Responses to this RFQ should be sealed in an opaque envelope or package. Clearly mark the envelope or package with "REQUEST FOR QUALIFICATIONS #11-032" followed by the firm's name and address. Print on the lower left corner "Consultant Services for Valley Millwood Trail" and the submittal date.

DELIVERY: Submittals must be received on the day, date, time and location stipulated on the cover sheet. Submittals delivered late may be rejected as non-responsive and be returned unopened.

ATTACHMENT A – PART 1

GENERAL INFORMATION

A. Legal Name of Applicant Company _____

B. Name of Contact Person _____

Title _____

Telephone Number including area code _____

C. Did outside individuals/agencies assist with preparation of this program? YES NO
If "Yes", please describe:

D. RECEIPT OF ADDENDA: Firm acknowledges receipt of the following addenda if any:

Addendum No. _____	Addendum No. _____	Addendum No. _____	Addendum No. _____
Dated _____	Dated _____	Dated _____	Dated _____

I certify that to the best of my knowledge the information contained in this request for qualifications is accurate and complete and that I have the legal authority to commit this agency to a contractual agreement. I realize the final funding for any service is based upon funding levels and the approval of the Spokane Valley City Council.

Print Name

Title

Signature, Administrator, or Applicant Agency

Date

ATTACHMENT A – PART 2

ADMINISTRATIVE INFORMATION FOR PRIME:

A. FIRM:

1. Name of firm:
2. Business address including zip code:
3. Telephone number including area code:
4. Fax number including area code:
5. Federal Tax Identification Number:
6. Washington State UBI Number if issued:
7. State Industrial Account Identification Number if issued:
8. SIC Code (Name):
9. NAICS Code (Name):
10. Following is a listing of all engagements the company has undertaken in the last five years that have resulted in:

(a) Arbitration or litigation and the disposition of the cases.

(b) Claims being filed by the Federal Government or the Washington State Departments of L & I, Employment Security or Revenue.

(c) Liens or claims recorded with the Spokane County Auditor by suppliers or subcontractors. List with whom, for what, and amount.

B. INSURANCE COMPANY:

1. Name of Insurance Company
2. Name of Insurance Agent:
3. Address including zip code:
4. Telephone number including area code:

ADMINISTRATIVE INFORMATION FOR SUB-CONSULTANT(S):

A. FIRM:

1. Name of firm:
2. Business address including zip code:
3. Telephone number including area code:
4. Fax number including area code:
5. Federal Tax Identification Number:
6. Washington State UBI Number if issued:
7. State Industrial Account Identification Number if issued:
8. SIC Code (Name):
9. NAICS Code (Name):
10. Contact Person Regarding this Submittal's Information:
11. Firm's Areas of Expertise:

ATTACHMENT B - EVALUATION CRITERIA AND WEIGHTS

It is strongly recommended that this be used as the outline for your response.

Criteria	Description	Evaluation Weight
1. PROJECT TEAM EXPERIENCE & QUALIFICATIONS		50
a.	Summarize the relevant experience and qualifications of your Project Manager, Project Engineer, Planner, and other key personnel. Discuss the ways in which the experience and qualifications of these individuals would benefit the City on the project.	
b.	Describe the availability of team members to complete the project. Indicate current and upcoming project commitments for the time period shown on the schedule. Address the home office of team members.	
c.	Provide comprehensive information regarding the track record of the firm in providing relevant services. Provide detailed descriptions and discuss the size and complexity of the projects, the special issues, and the technical challenges that were addressed. Specifically address experience with rails-with-trails projects.	
d.	Provide references (with contact names and telephone numbers) for projects with a similar scope completed within the last three years.	
e.	Summarize the experience of the Project Manager and other key personnel on tasks that may not be immediately awarded such as ROW services, surveying, and construction management.	
2. PROJECT UNDERSTANDING & APPROACH		30
a.	Describe the firm's capacity to recognize "project specific" issues and develop creative solutions to address them. Provide examples of challenges and resulting solutions from previous projects.	
b.	Describe the particular processes that are used to complete the various scope-of-work elements.	
3. PROJECT MANAGEMENT & SCHEDULE		10
a.	Present the project management procedures that will be used in the execution of the work. Describe the involvement and the duties of the project manager, with a clear description of the ways in which the project will be kept on budget and on schedule.	
b.	Discuss the quality control measures that will be put in place, and describe the stages of document review and the team members that will be involved and their responsibilities.	
4. PRESENTATION, ORGANIZATION AND CLARITY OF RFQ SUBMITTAL		10
	The organization of the RFQ submittal and the manner in which information is presented in the submittal will be evaluated as an indication of the firm's ability to assemble clear and concise documents and to present the project to the public.	
TOTAL POSSIBLE POINTS		100

ATTACHMENT C – DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

The City will prepare contracts based upon a scope of work and fee as negotiated and approved by the A/E and the City. The following Draft Agreement for Professional Services shall be used as contract between the City and the selected Consultant. Firms considering responding to this RFQ are well advised to review the terms and conditions listed within the draft agreement prior to making their decision whether to submit a response or not.

Should the City and A/E fail in their negotiations the City reserves the right to end negotiations, at a time of its choosing, and begin negotiations with the next “most highly-qualified firm”. Failure to negotiate a scope of work and fee will not terminate the A/E’s “eligibility” status. Contracts resulting from this RFQ are not exclusive services Agreements. The A/E may take on other professional assignments while completing work under this RFQ.

This Contract is for the employment of the A/E as an independent contractor. The A/E holds that they are an independent contractor doing business as listed above and is solely responsible for paying any and all taxes associated with the work of this Agreement including but not necessarily limited to income and social security taxes.

DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

<Contracting Entity>

THIS AGREEMENT is made by and between the City of Spokane Valley, a code City of the State of Washington, hereinafter “City” and _____, hereinafter “Contracting Entity,” jointly referred to as “parties.”

IN CONSIDERATION of the terms and conditions contained herein the parties agree as follows:

1. **Work to Be Performed.** The Contracting Entity shall provide all labor, services and material to satisfactorily complete the attached Scope of Services.

A. Administration. The City Manager or designee shall administer and be the primary contact for Contracting Entity. Prior to commencement of work, Contracting Entity shall contact the City Manager or designee to review the Scope of Services, schedule and date of completion. Upon notice from the City Manager or designee, Contracting Entity shall commence work, perform the requested tasks in the Scope of Services, stop work and promptly cure any failure in performance under this Agreement.

B. Representations. The City has relied upon the qualifications of the Contracting Entity in entering into this Agreement. By execution of this Agreement, Contracting Entity represents it possesses the ability, skill and resources necessary to perform the work and is familiar with all current laws, rules and regulations which reasonably relate to the Scope of Services. No substitutions of agreed-upon personnel shall be made without the prior written consent of the City.

Contracting Entity represents that the compensation as stated in paragraph 3 is adequate and sufficient compensation for its timely provision of all professional services required to complete the Scope of Services under this Agreement.

Contracting Entity shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Contracting Entity shall correct

such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City furnished information.

C. **Standard of Care.** Contracting Entity shall exercise the degree of skill and diligence normally employed by architects, professional engineers or consultants performing the same or similar services at the time such services are performed.

D. **Modifications.** The City may modify this Agreement and order changes in the work whenever necessary or advisable. The Contracting Entity will accept modifications when ordered in writing by the City Manager or designee. Compensation for such modifications or changes shall be as mutually agreed between the parties. The Contracting Entity shall make such revisions in the work as are necessary to correct errors or omissions appearing therein when required to do so by the City without additional compensation.

2. **Term of Contract.** This Agreement shall be in full force and effect upon execution and shall remain in effect until completion of all contractual requirements have been met as determined by the City. Contracting Entity shall complete its work within _____ of execution of this Agreement, unless the time for performance is extended in writing by the parties.

Either party may terminate this Agreement for material breach after providing the other party with at least ten days' prior notice and an opportunity to cure the breach. The City may, in addition, terminate this Agreement for any reason by ten days' written notice to the Contracting Entity. In the event of termination without breach, the City shall pay the Contracting Entity for all work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** The City agrees to pay the Contracting Entity \$_____ as full compensation for everything done under this Agreement. Contracting Entity shall not perform any extra, further or additional services for which it will request additional compensation from the City without a prior written agreement for such services and payment therefor.

4. **Payment.** The Contracting Entity shall be paid monthly upon presentation of an invoice to the City. Applications for payment shall be sent to the City Clerk at the below stated address.

The City reserves the right to withhold payment under this Agreement which is determined in the reasonable judgment of the City Manager or designee to be noncompliant with the Scope of Services, City standards, City Code, and federal or state standards.

5. **Notice.** Notice shall be given in writing as follows:

TO THE CITY:

Name: Christine Bainbridge, City Clerk
Phone Number: (509) 921-1000
Address: 11707 East Sprague Ave, Suite 106
Spokane Valley, WA 99206

TO THE CONTRACTING ENTITY:

Name:
Phone Number:
Address:

6. **Applicable Laws and Standards.** The parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws and regulations. Contracting Entity warrants that its designs, construction documents, and services shall conform to all federal, state and local statutes and regulations.

7. **Relationship of the Parties.** It is understood, agreed and declared that the Contracting Entity shall be an independent contractor, and not the agent or employee of the City, that the City is interested in only the results to be achieved, and that the right to control the particular manner, method and means in which the services are performed is solely within the discretion of the Contracting Entity. Any and all employees who provide services to the City under this Agreement shall

be deemed employees solely of the Contracting Entity. The Contracting Entity shall be solely responsible for the conduct and actions of all its employees under this Agreement and any liability that may attach thereto.

8. **Ownership of Documents.** All drawings, plans, specifications, and other related documents prepared by the Contracting Entity under this Agreement are and shall be the property of the City, and may be subject to disclosure pursuant to RCW 42.56 or other applicable public record laws. The written, graphic, mapped, photographic, or visual documents prepared by Contracting Entity under this Agreement shall, unless otherwise provided, be deemed the property of the City. The City shall be permitted to retain these documents, including reproducible camera-ready originals of reports, reproduction quality mylars of maps, and copies in the form of computer files, for the City's use. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, drawings, images or other material prepared under this Agreement, provided that the Contractor shall have no liability for the use of the Contractor's work product outside of the scope of its intended purpose.

9. **Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of the Contracting Entity's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls and record of matters covered by this Agreement for a period of three years from the date final payment is made hereunder.

10. **Insurance.** The Contracting Entity shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contracting Entity, its agents, representatives, or employees.

A. **Minimum Scope of Insurance.** Contracting Entity shall obtain insurance of the types described below:

1. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial general liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Contracting Entity's commercial general liability insurance policy with respect to the work performed for the City.
3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.
4. Professional liability insurance appropriate to the Contracting Entity's profession.

B. **Minimum Amounts of Insurance.** Contracting Entity shall maintain the following insurance limits:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial general liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for automobile liability, professional liability and commercial general liability insurance:

1. The Contracting Entity's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contracting Entity's insurance and shall not contribute with it.
2. Contracting Entity shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Contracting Entity.

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

E. Evidence of Coverage. As evidence of the insurance coverages required by this Agreement, the Contracting Entity shall furnish acceptable insurance certificates to the City at the time the Contracting Entity returns the signed Agreement. The certificate shall specify all of the parties who are additional insureds, and will include applicable policy endorsements, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. The Contracting Entity shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. Indemnification and Hold Harmless. The Contracting Entity shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, subject only to the limitations provided below:

Contracting Entity's duty to indemnify shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Contracting Entity, or its agents or employees. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contracting Entity, its agents or employees, and the City, its officers, officials, employees, or volunteers, the Contracting Entity's duty to indemnify hereunder shall be only to the extent of the Contracting Entity's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contracting Entity's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. Contracting Entity's obligation to defend, indemnify and hold the City harmless shall include, but not be limited to, the City's attorney and expert fees, court costs, and all other claim-related expenses.

This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of the Agreement.

12. Waiver. No officer, employee, agent or other individual acting on behalf of either party has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver in one instance shall be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

13. Assignment and Delegation. Neither party shall assign, transfer or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without first obtaining the written consent of the other party.

14. **Subcontracts.** Except as otherwise provided herein, the Contracting Entity shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

15. **Confidentiality.** Contracting Entity may, from time to time, receive information which is deemed by the City to be confidential. Contracting Entity shall not disclose such information without the prior express written consent of the City or upon order of a Court of competent jurisdiction.

16. **Jurisdiction and Venue.** This Agreement is entered into in Spokane County, Washington. Disputes between the City and Contracting Entity shall be resolved in the Superior Court of the State of Washington in Spokane County. Notwithstanding the foregoing, Contracting Entity agrees that it may, at the City's request, be joined as a party in any arbitration proceeding between the City and any third party that includes a claim or claims that arise out of, or that are related to Contracting Entity's services under this Agreement. Contracting Entity further agrees that the Arbitrator(s) decision therein shall be final and binding on Contracting Entity and that judgment may be entered upon it in any court having jurisdiction thereof.

17. **Cost and Attorney's Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to its attorney's fees and costs of such litigation (including expert witness fees).

18. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the parties and supercedes any prior oral or written agreements. This Agreement may not be changed, modified or altered except in writing signed by the parties hereto.

19. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from any person with an interest in this Agreement.

20. **Business Registration.** Prior to commencement of work under this Agreement, Contracting Entity shall register with the City as a business.

21. **Severability.** If any section, sentence, clause or phrase of this Agreement should be held to be invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other section, sentence, clause or phrase of this Agreement.

22. **Exhibits.** Exhibits attached and incorporated into this Agreement are:

1. Scope of Services
2. Insurance Certificates

The parties have executed this Agreement this ___ day of _____, 20__.

CITY OF SPOKANE VALLEY

Contracting Entity:

Mike Jackson, City Manager

By:
Its: Authorized Representative
Tax ID No. _____

ATTEST:

APPROVED AS TO FORM:

Christine Bainbridge, City Clerk

Office of the City Attorney