

CITY OF SPOKANE VALLEY
Public Works Department

REQUEST FOR PROPOSALS (RFP) #16-023

Solid Waste, Recycling, and Organics Collection Services Contract Consultant

The City of Spokane Valley seeks proposals from qualified firms interested in providing consulting services to assist in procurement of solid waste, recycling and organics collection contracts for residential and commercial solid waste, recycling, and organics. The main tasks include assisting with: public participation process; providing and analyzing rate, service level, and revenue options, including recycling and organics collection options; drafting, reviewing and finalizing RFP/RFQ for solid waste, recycling and organics collection services; evaluating and recommending solid waste recycling and organics collection provider(s); drafting, reviewing, negotiating and finalizing contracts with collection provider(s); and implementing transition from existing contract to new contract.

The City of Spokane Valley encourages disadvantaged, minority and women-owned consultant firms to respond. A copy of the RFP is available online at www.spokanevalley.org/content/6836/6916/default.aspx. Submit an original plus five duplicate copies of the proposal by **4:00 pm (local time) on Thursday, February 18, 2016**. Proposals should be delivered to City of Spokane Valley, Attn: Public Works Director Eric Guth, 11707 E. Sprague Ave., Suite 106, Spokane Valley, WA 99206. For more information, contact eguth@spokanevalley.org or call 509-720-5000.

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 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, non-discrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Christine Bainbridge, MMC
Spokane Valley City Clerk
Publish: January 29, 2016 and February 5, 2016



11707 E Sprague Ave Suite 106 ♦ Spokane Valley WA 99206
509.921.1000 ♦ Fax: 509.921.1008 ♦ cityhall@spokanevalley.org

CITY OF SPOKANE VALLEY REQUEST FOR PROPOSALS

Solid Waste, Recycling, and Organics Collection Services RFP and Contract Consultant

Due Date: 4:00 p.m., February 18, 2016

The City of Spokane Valley's (the "City") current solid waste collection contract terminates on March 31, 2018, and as a consequence we are issuing this Request for Proposals ("RFP") to seek proposals from firms interested in providing consulting services to assist us with procurement of one or more long term solid waste, recycling, and organics collection contracts for residential and commercial solid waste, recycling, and organics to replace the expiring contracts.

Background information

The City is a non-charter code city organized under Title 35A of the Revised Code of Washington ("RCW"), and has a Council-Manager form of government. The City Council consists of seven members elected at-large. The Mayor is elected by his fellow Councilmembers, and serves as the Chair of the Council. The City Manager directs all City operations. The City Manager seeks at all times to develop and implement a "best practices" approach in operating the City government and to achieve a balanced, efficient, economical, and quality service delivery.

The City incorporated March 31, 2003, and is currently the ninth largest city in Washington, encompassing 38.5 square miles. Its current population is approximately 93,000. The City is part of the larger Spokane metropolitan area of approximately 450,000 people. The City generally considers itself to be a "contract" city, with many core services provided by contract with private or other public entities.

History of Solid Waste in the City

Upon incorporation, two entities, Sunshine Disposal, Inc. ("SDI"), and Waste Management of Washington, Inc. ("WMW"), provided residential and commercial solid waste collection services within the City pursuant to G-Certificates granted by the Washington Utilities and Transportation Commission. In 2008, the City gave notice to the two certificated haulers operating within its boundaries that it intended to assume responsibility for solid waste collection within the City. Accordingly, pursuant to State law, the City entered into franchises with SDI and WMW for an additional seven years of solid waste collection service. In 2014, the City entered into contracts with SDI and WMW to provide for an additional three years of solid waste collection service in order to compensate each company for any remaining measurable damages. The City's contracts with SDI and WMW provide for continuation of the same level of service that was previously

provided under the WUTC certificate. These services include residential solid waste and recycling pick-up. Residential recycling is required with subscription to solid waste service, and is collected as a single source, with separation carried out by WMW at a regional recycling facility located outside of the City limits at 2902 South Geiger Boulevard, Spokane, Washington. Organic (clean green) collection is an optional service under the existing solid waste contracts, and so is charged separately from solid waste and recycling fees. The solid waste collection contracts expire on March 31, 2018.

Further, effective November 17, 2014, the City elected to form its own solid waste management system, and entered into a contract with Sunshine Recyclers, Inc., to provide solid waste transfer, transport, and disposal services from Sunshine Recycler's privately owned transfer station, located at 2405 North University Road, Spokane Valley, Washington. As part of the contract with Sunshine Recyclers, the City is obligated to require any solid waste collection provider to dispose of collected solid waste at the Sunshine Recycler's transfer station. The City also adopted its Solid Waste Management Plan effective November 17, 2014. As part of the City's Solid Waste Management Plan, the City does not require mandatory solid waste pick-up and so citizens are free to choose to use a solid waste collection provider or to self-haul to the area's transfer stations.

More information regarding the City's Solid Waste Management System, including links to the City's Solid Waste Management Plan and current collection contracts, may be accessed on the City's website at <http://www.spokanevalley.org/content/6836/6916/default.aspx>.

In anticipation of the expiration of the solid waste collection contracts, the City has determined to pursue a competitive process to select and enter into one or more long-term contracts for residential and commercial solid waste, recycling, and organics collection services.

Communications

All communications related to responding to this RFP are to be directed to Eric Guth, Public Works Director at eguth@spokanevalley.org or 509-720-5000, or to Morgan Koudelka, Senior Administrative Analyst at mkoudelka@spokanevalley.org or 509-720-5104. This is an RFP for a service contract with an anticipated amount under \$200,000 and therefore pursuant to Spokane Valley Municipal Code 3.35.010, consultant selection does not require City Council approval. Unauthorized contact regarding this RFP with City Councilmembers may result in disqualification. Any oral communications by any City employee shall be considered unofficial and non-binding on the City.

Scope of Work

The City has determined to select and hire a consultant to assist with the solid waste collection services RFP process. The City anticipates that the hired firm will assist the City with the following:

Assist with development of a solid waste collection services RFP, contract negotiation, and transition timeline that will ensure no disruption of services when the existing contracts expire on March 31, 2018.

Assist with public participation process to obtain public comment on new or additional services desired from the new collection provider. This will entail assisting with and/or attending City Council meetings and other public meetings.

Assist in providing and analyzing rate, service level, and revenue options, including recycling and organics collection options.

Assist in drafting, reviewing, and finalizing RFP/RFQ for solid waste, recycling, and organics collection services.

Assist in evaluating and selecting solid waste, recycling, and organics collection provider(s).

Assist in drafting, reviewing, negotiating, and finalizing contract(s) with collection provider(s).

Assist with implementing transition from existing collection providers to new providers.

The City anticipates the contract with the selected consultant will last until March 31, 2018.

Schedule

The City anticipates the following schedule for completion of the consultant RFP process:

RFP publication date:	January 22, 2016
RFP submission date:	February 18, 2016
City decision on or about:	February 26, 2016

How to Respond

Submit five copies of written responses no later than **4:00 p.m. on February 18, 2016** to City of Spokane Valley, Attn: Eric Guth, Public Works Director, 11707 East Sprague Avenue, Suite 106, Spokane Valley, WA 99206. Limit written responses, excluding attachments, to five pages. Submittals shall be signed by authorized representatives of the responding entity. Unsigned proposals shall not be considered. Written proposals not received by **4:00 p.m. on February 18, 2016** shall not be considered by the City. The responding entity is responsible for ensuring that written responses are received by the City by the time and date specified herein and accept all risk of late delivery for the method of delivery chosen, regardless of fault.

Submittal Requirements

Written responses shall cover the following areas of inquiry:

1. Business Statement, attached hereto as Attachment "A".
2. Description of firm and relevant qualifications, including experience with solid waste, recycling, and organics collection. Explain how selection of your firm would benefit the City.
3. List the relevant experience and qualifications of the employees who will be assigned to this project.

4. Provide three samples of similar work you have done since January 1, 2010, with at least two projects being with cities located in Washington.
5. Provide three references for cities that have used your firm for similar services.
6. Propose a compensation package, inclusive of all costs (include any applicable taxes). The proposed compensation package shall include an estimated total cost. The City shall consider costs as a factor in the review process, but costs shall not be the determinative factor. The City expects that negotiation to refine the compensation package may occur upon selection.

Naming of a reference is considered permission to contact the reference. The City may contact outside individuals, whether offered as references or not. The City retains the right to use such information in its decision. Submittal of a response is agreement that the City may contact and use such information.

Evaluation Criteria

Responses will be evaluated by the City as set forth immediately below:

1. Completed Business Statement.
2. Relevant experience of the firm and its personnel, specifically as it pertains to RFPs and contracts for solid waste, recycling, and organic collection services.
3. Experience and qualifications of the employees assigned to this project.
4. Samples of work.
5. Familiarity with and understanding of solid waste, recycling, and organics collection services, especially as they pertain to Washington cities.
7. Ability to meet proposed schedule.
8. Proposed fees, price, and/or costs.
9. Quality, timeliness and thoroughness of the response submitted.

The City reserves the right to utilize new or revised evaluation criteria at its sole discretion.

Addenda, Modifications and Clarifications

1. The City reserves the right to change the RFP schedule or issue addenda to the RFP at any time. All such addenda will become part of the RFP. The City will provide notification of addenda in the same manner as distribution of the RFP. It is the responder's responsibility to confirm as to whether any addenda have been issued. The City also reserves the right to cancel or reissue the RFP.

2. The City reserves the right to request for any responding entity to clarify its proposal or to supply any additional material deemed necessary to assist in the evaluation of the proposal. Modification of a proposal already received will be considered only if the modification is received prior to the submittal deadline. Any modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal.

Evaluation and Selection

The City reserves the right to award the contract to the responding entity which best meets the needs and interests of the City, or to reject all responses as set forth below. The following steps are anticipated:

- Step 1. Receipt and review of proposals and written responses.
- Step 2. City follow-up with respondents and possible in-person or phone interviews.
- Step 3. Initial reference and information check.
- Step 4. Selection of provider.
- Step 5. Negotiation of contract.

Finalize a Scope of Work

City representatives and the selected finalist will review and finalize a Scope of Work prior to execution of the contract.

Contract

The City's proposed contract, with the terms and conditions, is attached to this RFP as Attachment "B". *Please note that the City expects all submitting entities 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 an entity must be noted in the responsive submittal. The exception to this is in the drafting of the Scope of Work. The City reserves the right to negotiate and revise any or all contract terms and conditions prior to contract signature.*

Insurance Requirements

The selected finalist shall provide insurance as required pursuant to the contract prior to beginning any work. The contract is attached as Attachment "B" hereto.

Rejection of Proposals

The City reserves the right to reject any or all submittals, portions, or parts thereof. The City reserves the right to obtain services through other means.

Non-Collusion

Submittal and signature of a proposal swears that the document and proposal is genuine and not a sham or collusive, and not made in interest of any person not named, and that the responding entity has not induced or solicited others to submit a sham offer, or refrain from proposing.

No Costs

The City shall not be responsible for any costs incurred by any respondents in preparing, submitting, or presenting its response to the RFP or interview process, if applicable. The City shall not be responsible for any costs incurred by the responding entity selected by the City prior to the date of the contract.

Non-Endorsement

As a result of the selection of a responding entity, the City is neither endorsing nor suggesting the responding entity's services are the best or only solution. The responding entity agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without prior express written consent from the City.

Ownership of Documents

Any reports, studies, conclusions and summaries submitted by the responding entity shall become the property of the City.

Public Records

Under Washington State law, the documents (including all such items as described in RCW 42.56.010 for the term “writing”) submitted in response to this RFP (the “documents”) become a public record upon submission to the City, subject to mandatory disclosure upon request by any person, unless the documents are exempted by a specific provision of law. If the City receives a request for inspection or copying of the documents, it will promptly notify the person submitting the documents to the City (by U.S. mail and electronic mail if the person has provided an e-mail address) and upon written request of such person, received by the City within five days of the providing of such notice, will postpone disclosure of the documents for a reasonable period of time as permitted by law to enable such person to seek a court order prohibiting or conditioning the release of such documents. The City assumes no contractual obligation to enforce any exemption.

Attachment "A"

BUSINESS STATEMENT

Please complete and submit with your response.

1. Name of business: _____

2. Business address: _____

3. Phone: _____ Business fax: _____ e-mail: _____

4. Business classification (check all that apply):

Individual _____ Partnership _____ Corporation _____

5. Federal tax number (UBI number): _____

6. Name of owner: _____

7. Does the company maintain insurance in amounts specified by the City contract:

Yes: _____ No: _____

(General liability insurance of at least \$1,000,000 per occurrence; \$2,000,000 aggregate, Combined Single Limit (CSL); Automobile liability of at least \$1,000,000 per accident CSL; Professional Liability, if applicable, of at least \$1,000,000.

If no, describe the differences: _____

8. Are there claims pending against this insurance policy? Yes: _____ No: _____

If yes, please explain the nature of the claims: _____

9. Has the company or anybody in the company ever been disqualified or terminated by any public agency? Yes: _____ No: _____

10. Proposal offers shall be good and valid until the City completes the award or rejects the proposals. Failure to concur with this condition may result in rejection of the offer. Does the firm accept this condition? Yes: _____ No: _____

I certify that to the best of my knowledge, the information contained in this proposal is accurate and complete, and that I have the legal authority to commit this company to a contractual agreement.

SIGNATURE: _____ Date: _____

PRINT NAME AND TITLE OF SIGNER: _____

Attachment "B"
Form of Contract

AGREEMENT FOR SERVICES

<Consultant>

THIS AGREEMENT is made by and between the City of Spokane Valley, a code City of the State of Washington, hereinafter "City" and <name of Consultant>, hereinafter "Consultant," jointly referred to as "Parties."

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

1. **Work to Be Performed.** Consultant shall provide all labor, services, and material to satisfactorily complete the Scope of Services, attached as Exhibit A.

A. **Administration.** The City Manager or designee shall administer and be the primary contact for Consultant. Prior to commencement of work, Consultant 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, Consultant 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.** City has relied upon the qualifications of Consultant in entering into this Agreement. By execution of this Agreement, Consultant 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 City.

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

Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Consultant 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.** Consultant shall exercise the degree of skill and diligence normally employed by professional consultants engaged in the same profession, and performing the same or similar services at the time such services are performed.

D. **Modifications.** City may modify this Agreement and order changes in the work whenever necessary or advisable. Consultant will accept modifications when ordered in writing by the City Manager or designee, so long as the additional work is within the scope of Consultant's area of practice. Compensation for such modifications or changes shall be as mutually agreed between the Parties. Consultant shall make such revisions in the work as are necessary to correct errors or omissions appearing therein when required to do so by 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 City. Consultant shall complete its work by <date>, 20_____, 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 10 days' prior notice and an opportunity to cure the breach. City may, in addition, terminate this Agreement for any reason by 10 days' written notice to Consultant. In the event of termination without breach, City shall pay Consultant for all work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** City agrees to pay Consultant an agreed upon hourly rate up to a maximum amount of \$_____ as full compensation for everything done under this Agreement, as set forth in Exhibit B. Consultant shall not perform any extra, further, or additional services for which it will request additional compensation from City without a prior written agreement for such services and payment therefore.

4. **Payment.** Consultant shall be paid monthly upon presentation of an invoice to City. Applications for payment shall be sent to the City Finance Department at the below-stated address.

City reserves the right to withhold payment under this Agreement for that portion of the work (if any) 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.** Notices other than applications for payment shall be given in writing as follows:

TO THE CITY:

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

TO THE CONSULTANT:

Name:
Phone:
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. Consultant warrants that its designs, construction documents, and services shall conform to all federal, state, and local statutes and regulations.

7. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions.

A. By executing this Agreement, the Consultant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

8. **Relationship of the Parties.** It is understood and agreed that Consultant shall be an independent contractor and not the agent or employee of City, that 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 Consultant. Any and all employees who provide services to City under this Agreement shall be deemed employees solely of Consultant. The Consultant shall be solely responsible for the conduct and actions of all its employees under this Agreement and any liability that may attach thereto.

9. **Ownership of Documents.** All drawings, plans, specifications, and other related documents prepared by Consultant under this Agreement are and shall be the property of City, and may be subject to disclosure pursuant to chapter 42.56 RCW or other applicable public record laws. The written, graphic, mapped, photographic, or visual documents prepared by Consultant under this Agreement shall, unless otherwise provided, be deemed the property of City. 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. 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 Consultant shall have no liability for the use of Consultant's work product outside of the scope of its intended purpose.

10. **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 Consultant's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine, 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.

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

A. **Minimum Scope of Insurance.** Consultant 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.

2. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury, and advertising injury. City shall be named

as an additional insured under Consultant's commercial general liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of no less than \$1,000,000 per accident.

2. Commercial general liability insurance shall be written with limits no less than \$1,000,000 for each occurrence, and \$2,000,000 for general aggregate.

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

1. Consultant's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be in excess of Consultant's insurance and shall not contribute with it.

2. Consultant shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Consultant.

3. If Consultant maintains higher insurance limits than the minimums shown above, City shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Consultant, irrespective of whether such limits maintained by Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Consultant.

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

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, Consultant shall furnish acceptable insurance certificates to the City Clerk at the time Consultant returns the signed Agreement, which shall be Exhibit C. The certificate shall specify all of the parties who are additional insureds, and shall 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 City. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

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

G. City Full Availability of Consultant's Insurance Limits. If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

12. **Indemnification and Hold Harmless.** Consultant shall, at its sole expense, defend, indemnify, and hold harmless City and its officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, attorney's fees, costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors, or omissions in the services provided by Consultant, Consultant's agents, subcontractors, subconsultants, and employees to the fullest extent permitted by law, subject only to the limitations provided below.

Consultant's duty to defend, indemnify, and hold City harmless shall not apply to liability for damages arising out of such services caused by or resulting from the sole negligence of City or City's agents or employees pursuant to RCW 4.24.115.

Consultant's duty to defend, indemnify, and hold City harmless against liability for damages arising out of such services caused by the concurrent negligence of (a) City or City's agents or employees, and (b) Consultant, Consultant's agents, subcontractors, subconsultants and employees, shall apply only to the extent of the negligence of Consultant, Consultant's agents, subcontractors, subconsultants, and employees.

Consultant's duty to defend, indemnify, and hold City harmless shall include, as to all claims, demands, losses, and liability to which it applies, City's personnel-related costs, reasonable attorneys' fees, the reasonable value of any services rendered by the office of the City Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

Consultant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that Consultant's waiver of immunity under this provision extends only to claims against Consultant by City, and does not include, or extend to, any claims by Consultant's employees directly against Consultant.

Consultant hereby certifies that this indemnification provision was mutually negotiated.

13. **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. A waiver in one instance shall not 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.

14. **Assignment and Delegation.** Neither Party may assign, transfer, or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without prior written consent of the other Party.

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

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

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

18. **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).

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

20. **Anti-kickback.** No officer or employee of 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.

21. **Business Registration.** Prior to commencement of work under this Agreement, Consultant shall register with the City as a business if it has not already done so.

22. **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.

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

- A. Scope of Services
- B. Fee proposal
- C. Insurance Certificates

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

CITY OF SPOKANE VALLEY

Consultant:

Mike Jackson, City Manager

By:
Its: Authorized Representative

ATTEST:

Christine Bainbridge, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney