



10210 E Sprague Ave □ Spokane Valley WA 99206  
Phone (509) 720-5000 □ [www.spokanevalley.org](http://www.spokanevalley.org)

## **CITY OF SPOKANE VALLEY REQUEST FOR QUALIFICATIONS**

### ***Real Estate Broker Services***

**Due Date: 4:00 p.m., July 7, 2023**

The City of Spokane Valley (the “City”) is seeking a Real Estate Broker Services Firm through this Request for Qualifications (“RFQ”).

#### **Background information**

The City of Spokane Valley is a non-charter code city organized under Title 35A 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 of Spokane Valley incorporated March 31, 2003, and is currently the ninth largest city in Washington, encompassing 38.5 square miles. Its current population is approximately 107,100. The City is part of the larger Spokane metropolitan area of approximately 546,000. The City generally considers itself to be a “contract” city, with many core services provided by contract with private or other public entities.

The City is seeking proposals from commercial real estate brokerage firms that specialize in commercial and/or residential properties to provide general consulting and to assist in the sale, purchase and transfer of real estate properties. It is the intent of this Request for Qualifications (RFQ) to have the successful broker/firm, enter into an Agreement for Consultant services with the City of Spokane Valley to supply real estate services as needed and outlined herein.

#### **Communications**

All communications related to responding to this RFQ are to be directed to the City Project Manager, Virginia Clough at [vclough@spokanevalley.org](mailto:vclough@spokanevalley.org) or (509) 720-5103. Unauthorized contact regarding this RFQ with other City employees or City Councilmembers shall result in automatic disqualification. Any oral communications by Virginia Clough will be considered unofficial and non-binding on the City.

## **Scope of Work**

The services requested include but are not limited to, appraisals, appraisal review, and property owner negotiations for properties in Spokane Valley. This scope will also include providing all needed reports, studies, conclusions and summaries to provide said services. The selected consultant is expected to be familiar with property acquisition in the Spokane region.

## **Schedule**

The City anticipates the following schedule for completion of the RFQ process:

RFQ publication date:	June 9 and 16, 2023
RFQ submission date:	July 7, 2023
City decision by:	July 27, 2023
Anticipated start date:	August 1, 2023

## **How to Respond**

Submit four copies of written responses and one electronic copy (preferably with all attachments in *one* pdf document) no later than **4:00 p.m. on July 7, 2023** to City of Spokane Valley, Attn: Virginia Clough, Project Manager, 10210 East Sprague Avenue, Spokane Valley, WA 99206. Limit written responses, excluding attachments, to 15 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 July 7, 2023** 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. Cover Letter: Provide a cover letter indicating your interest in serving as the City's real estate agent/firm to buy/sell/transfer properties in the City of Spokane Valley and advise on other real property issues as needed.
3. Business/Agency history, including qualifications.
4. List the relevant experience and qualifications of the employees who will be assigned to this project.
5. Marketing Methods: Describe preferred methods of identifying target user groups and a description of the marketing materials and the strategy for presenting a site to a regional and national marketplace (when appropriate).
6. Additional Services: Describe additional relevant/unique services offered through your firm.

7. Conflict of Interest: In order to avoid a conflict of interest, or the appearance of a conflict of interest, your firm should not engage in any outside activities that are inconsistent, incompatible, or appear to conflict with your ability to exercise independent/object judgment in the best interest of the City of Spokane Valley. Please outline all conflicts of interest, or potential conflicts, that may exist for your firm in relation to providing real estate services for the City of Spokane Valley.

Good Standing: Your firm must be in compliance with Federal, State, County and local units of government; which specifically includes good tax payment status and good corporate registration status.

8. References: Provide three letters of recommendation from individuals, businesses or agencies that have used your company for similar services.

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.

#### **Addenda, Modifications and Clarifications**

1. The City reserves the right to change the RFQ schedule or issue addenda to the RFQ at any time. All such addenda will become part of the RFQ. The City will provide notification of addenda in the same manner as distribution of the RFQ. 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 RFQ.
2. The City reserves the right to request 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 qualifications and written responses.
- Step 2. Initial reference and information check.
- Step 3. Interviews of short-listed consultants, if necessary.
- Step 4. Selection of consultant.
- Step 5. Negotiation of fees, price, and/or costs.

The following scoring system will be utilized. Consultants shall be evaluated by an evaluation committee consisting of the Project Manager and other City staff. It is strongly recommended that this be used as the outline for your response.

<b>1. PROJECT TEAM EXPERIENCE &amp; QUALIFICATIONS</b>	<b>30</b>
a. Summarize the relevant experience and qualifications of your Project Manager and team. Discuss the ways in which the experience and qualifications of these individuals would benefit the City on this project.	
b. Discuss the capabilities/benefits of any specialty staff and/or sub-consultants that you have included on your team for this project. Address the home office and availability of the team members and the support staff throughout the anticipated time frame.	
<b>2. CONSULTANT'S EXPERIENCE WITH SIMILAR PROJECTS</b>	<b>20</b>
a. Provide comprehensive information regarding the track record of the Consultant in providing relevant real estate brokerage services.	
b. Provide references (with contact names and telephone numbers) for similar projects completed within the last three years. Provide detailed descriptions for similar projects undertaken recently by the Consultant; and, discuss the size and complexity of the projects, the special issues, and the challenges that were addressed.	
c. Address the Consultant's ability and successes in conforming to tight project schedules and budgets.	
d. Include familiarity with property acquisition in the City of Spokane Valley and Spokane region and ability to market to prospects beyond the region.	
e. Describe preferred methods of identifying target user groups and a description of the marketing materials and the strategy for presenting a site to a regional and national marketplace.	
<b>3. PROJECT UNDERSTANDING &amp; APPROACH</b>	<b>25</b>
a. Describe the Consultant'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 ways in which the Consultant will apply knowledge gained from past projects to specific issues on this project.	
c. Identify significant features and potential issues that may be encountered and possible steps to eliminate or minimize those issues.	
<b>4. PROJECT MANAGEMENT &amp; SCHEDULE</b>	<b>20</b>
a. Present the project management procedures that will be used in the prosecution of the work. Describe the involvement and the duties of the Project Manager, with a clear description of the ways in which productivity will be monitored, and 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.	

## **5. ORGANIZATION AND CLARITY OF RFQ SUBMITTAL**

**5**

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 Consultant's ability to assemble clear and concise documents.

## **TOTAL POSSIBLE POINTS**

**100**

### **Interviews**

Interviews may be held for the top three most qualified consultants, if necessary. The City may desire to interview all key personnel who will work on the proposed project. The proposed Project Manager shall lead the interview. Interviewing consultants may be asked to provide supplemental or additional information for review 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 consultants being interviewed. If changes are made to the criteria or weights, they will be reduced to writing and be sent to the consultants prior to interviews.

Previous clients may be contacted as part of the evaluation process.

### **Finalize a Scope of Work**

City representatives and the selected finalist will review and finalize a Scope of Work.

### **Contract; Fee, Price, and Cost**

After identification of the most highly qualified firm, the City shall request a fee proposal from the firm and thereafter negotiate fees, prices and/or costs at amount(s) that are determined by the City to be fair and reasonable. If the City is unable to negotiate a fair and reasonable price for services, the City may terminate negotiations and select the next most highly qualified firm.

The City's proposed contract, with the terms and conditions, is attached to this RFQ as Attachment "B". Please note that the City expects all submitting entities to consent to the City contract terms and conditions. The City reserves the right to negotiate and revise any or all contract terms and conditions prior to contract signature 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 and negotiating fees, prices and/or costs.

### **Insurance Requirements**

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

### **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 RFQ 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 RFQ (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.

### **Assurance of Non-Discrimination**

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit qualifications 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.

**Attachment "A"**

**BUSINESS STATEMENT**  
*Please complete and submit with your response.*

1. Name of business: \_\_\_\_\_
2. Business address: \_\_\_\_\_
3. Phone: \_\_\_\_\_ Business fax: \_\_\_\_\_ Email: \_\_\_\_\_
4. Business classification (check all that apply):  
Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_
5. UBI number: \_\_\_\_\_
6. Name of owner: \_\_\_\_\_
7. Does the company maintain insurance in amounts specified by the *City contract*:  
(General liability insurance of at least \$2,000,000 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 \$2,000,000.)  
Yes: \_\_\_\_\_ No: \_\_\_\_\_  
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: \_\_\_\_\_

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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: \_\_\_\_\_
11. Receipt of Addenda: Consultant 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 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”**

**AGREEMENT FOR SERVICES**

**<Contractor>**

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 Contractor>, 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 a flat fee of \$ \_\_\_\_\_, (which includes Washington State Sales Tax if any is applicable) 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.

--OR--

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: City Clerk  
Phone: (509) 720-5000  
Address: 10210 East Sprague Avenue  
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's required insurance shall be of the types and coverages described below:

1. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
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 \$1,000,000 per accident.
2. Commercial general liability insurance shall be written with limits no less than \$2,000,000 each occurrence, and \$2,000,000 general aggregate.

C. Other Insurance Provisions. The Consultant's 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 self-insured pool coverage maintained by City shall be in excess of Consultant's insurance and shall not contribute with it.
2. Consultant shall provide City and all additional insured for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
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 the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the work.

**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.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51, RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**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 an 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. Assurance of Compliance with Applicable Federal Law.** During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees as follows:

A. Compliance with Regulations. Consultant shall comply with the federal laws set forth in subsection G, below ("Pertinent Non-Discrimination Authorities") relative to non-discrimination in federally-assisted programs as adopted or amended from time-to-time, which are herein incorporated by reference and made a part of this Agreement.

B. Non-discrimination. Consultant, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Consultant shall not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by Consultant for work to be

performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

D. Information and Reports. Consultant shall provide all information and reports required by the Acts, the regulations, and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the WSDOT to be pertinent to ascertain compliance with such Acts, regulations, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish the information, Consultant shall so certify to the City or the WSDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of a Consultant's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the WSDOT may determine to be appropriate, including, but not limited to:

1. Withholding payments to Consultant under the Agreement until Consultant complies; and/or
2. Cancelling, terminating, or suspending the Agreement, in whole or in part.

F. Incorporation of Provisions. Consultant shall include the provisions of paragraphs of these Contract Clauses in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, regulations and directives issued pursuant thereto. Consultant shall take action with respect to any subcontract or procurement as the City or the WSDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if Consultant becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Consultant may request that the City enter into any litigation to protect the interests of the City. In addition, Consultant may request the United States to enter into the litigation to protect the interests of the United States.

G. Pertinent Non-Discrimination Authorities: During the performance of this Agreement, the Consultant agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; and 49 Part 26;

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681 *et seq.*).

**22. 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.

**23. 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.

**24. 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:**

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John Hohman, City Manager

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By:  
Its: Authorized Representative

**APPROVED AS TO FORM:**

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Office of the City Attorney