

**City of Bellingham Request for Qualifications
RFQ 79B-2018**



**JAMES STREET
MULTIMODAL FEASIBILITY STUDY
(CITY PROJECT # ES-0549)**

RFQ INFORMATION

Issue Date: December 4, 2018
Purchasing Telephone: 360-778-7750
Contact Email: bids@cob.org

CLOSING INFORMATION

Date: January 4, 2019
Time: 11:00 AM
Location: Purchasing Office
Mailing Address: 2221 Pacific Street, Bellingham, WA 98229

The City of Bellingham 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 bidders that it will affirmatively ensure 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.

A handwritten signature in blue ink, appearing to read "Chad Schulhauser", is written over a horizontal line.

Chad Schulhauser, PE
Assistant Public Works Director

Section 1 – General Information

1.1 Purpose and Background

The City of Bellingham (“City”) is seeking submittals (RFQ #79B-2018) from transportation planning and engineering firms interested in providing professional transportation analysis services to the Engineering Division of the Public Works Department for the **James Street Multimodal Feasibility Study (ES-0549)** between East Orchard Drive and Kellogg Road (5,675 LF).

The City invites all interested parties to respond to this Request for Qualifications (RFQ) by submitting their qualifications relating to this type of project. All prospective consultants are advised that federally funded projects will be held to federal EEO requirements. Disadvantaged, minority and women-owned consultant firms are encouraged to respond. Upon consideration of the submittals, the City will negotiate final terms with the selected party.

The purpose of the James Street Multimodal Feasibility Study is to:

- 1.) Analyze alternatives for constructing ADA-compliant pedestrian, bicycle, and transit-supportive improvements on the James Street corridor;
- 2.) Identify preferred alternatives by arterial segment based on benefit-to-cost analysis;
- 3.) Develop all preferred alternatives to 30% design with cost estimates for construction;
- 4.) Develop a financially feasible phasing plan for construction; and
- 5.) Identify local, state, and federal funding options.

Background – Existing Conditions

James Street is the only north-south arterial street serving the King Mountain Neighborhood, which was annexed from the County to the City in 2009. In 2010, the City worked with neighborhood residents to create the King Mountain Neighborhood Plan, which includes zoning to allow between 2,000 to 3,000 additional homes to be constructed in the future. The pace of development has accelerated with several hundred multifamily apartments and townhomes constructed along Telegraph Road, several hundred single family detached homes under construction on James Street north of Kellogg Road, and last year development applications were made for multifamily apartments at James/Telegraph and townhomes at James/Bakerview. The King Mountain Neighborhood is one of the fastest growing areas in Bellingham (See Figure 1).

The City of Bellingham constructed multimodal transportation improvements on James Street from East Orchard Drive to Woodstock Way, including complete bridge reconstruction over the reroute of Squalicum Creek in 2015 and, in 2017, reconstructed and realigned the James/Woodstock intersection. In March 2017, Whatcom Transportation Authority (WTA) relocated Route 331 and began serving James Street with high-frequency transit service on the Gold GO Line with busses every 15-minutes in each direction. This WTA reroute was primarily to save time for Route 331, but also to gain transit ridership and provide transit service to WInco Grocery Store, which is in high-demand. Unfortunately, both James Street and Telegraph Road were constructed as rural roadways and do not have sidewalks, curbs, gutters, storm water conveyance, bicycle lanes, street lights, turn lanes, crosswalks, or bus shelters. Bellingham Public Works has made the reconstruction of Telegraph a high priority, but funding has been elusive to date with grant applications submitted to the Washington Transportation Improvement Board (TIB) turned down in both 2017 and 2018.

The City is now turning its attention to the middle section of the James Street corridor because in 2020, the City will complete construction of the Orchard-Birchwood grade-separated undercrossing of Interstate 5, which will connect to and include a traffic signal at James/Orchard (See Figure 1). The development application for 101 apartments at James/Telegraph is required to contribute funding to the cost of a traffic signal at James/Telegraph and the City is seeking funding for right-of-way acquisition and construction of a roundabout at James/Bakerview that is 100% designed. James Street between East Bakerview Road and Kellogg Road is also a narrow rural standard roadway with no sidewalks, curbs, gutters, storm water conveyance, bicycle lanes, street lights, turn lanes, crosswalks, or bus shelters. From Kellogg Road to the north, a private developer has been funding and constructing James Street in a northwesterly direction as phases of a large single-family subdivision are completed. Eventually, James Street will connect to Van Wyck Road and Guide-Meridian (SR 539).

Environmental Features, Impacts, and Mitigation

The physical geography of North Bellingham includes numerous environmental features that present challenges to funding and constructing transportation improvements along James Street (See Figure 2). As stated above, James Street is a narrow rural standard roadway with no shoulders and deep drainage ditches along both sides. Between East Orchard Drive and Telegraph Road, James Street crosses two significant ravines (Baker Creek and South Fork of Baker Creek) with steep slopes, forested wetlands, and salmon streams. North of East Bakerview Road, James Street crosses two additional streams (North Fork Baker Creek and James Street Creek). All improvement alternatives are expected to increase the footprint of the James Street corridor and are therefore expected to create environmental impact that will require mitigation.

Right-of-Way, Utilities, and Physical Challenges

Public right-of-way appears to be adequate along the entire 1.3-mile length of the corridor, but there are other physical challenges affecting the roadway as well. In the vicinity of Gilbert Drive on the south end of the corridor, the crest of a hill on James Street creates a sight-distance visibility issue for vehicles. Physical lowering of the roadbed may be required to eliminate the sight-distance issue, but the presence of sewer and water utility lines may make this difficult and/or very expensive.

Between East Orchard Drive and Telegraph Road, overhead power and telephone poles are located very close to the eastern edge of the James Street corridor. Depending on the improvement alternative, these poles may require relocation if there is not enough physical space for sidewalks, bikeways, or a combined multiuse pathway. North of Telegraph Road, the power poles are set back further from the roadway and relocation is probably not necessary. Private franchise utilities (Cascade Natural Gas, Puget Sound Energy, Comcast, Verizon, etc.) also have facilities located within the project limits.

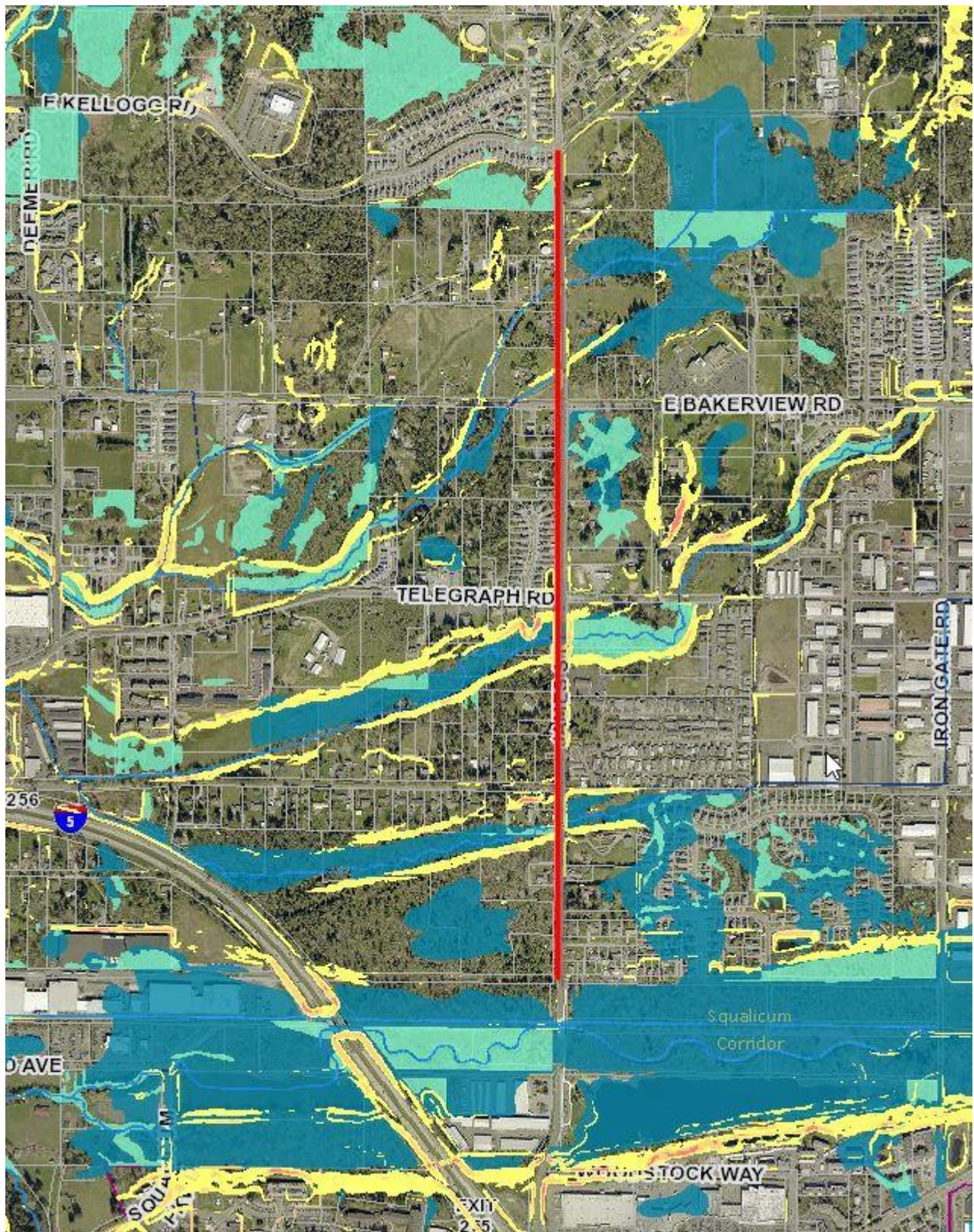


Figure 2. Environmental Features and Challenges Along James Street

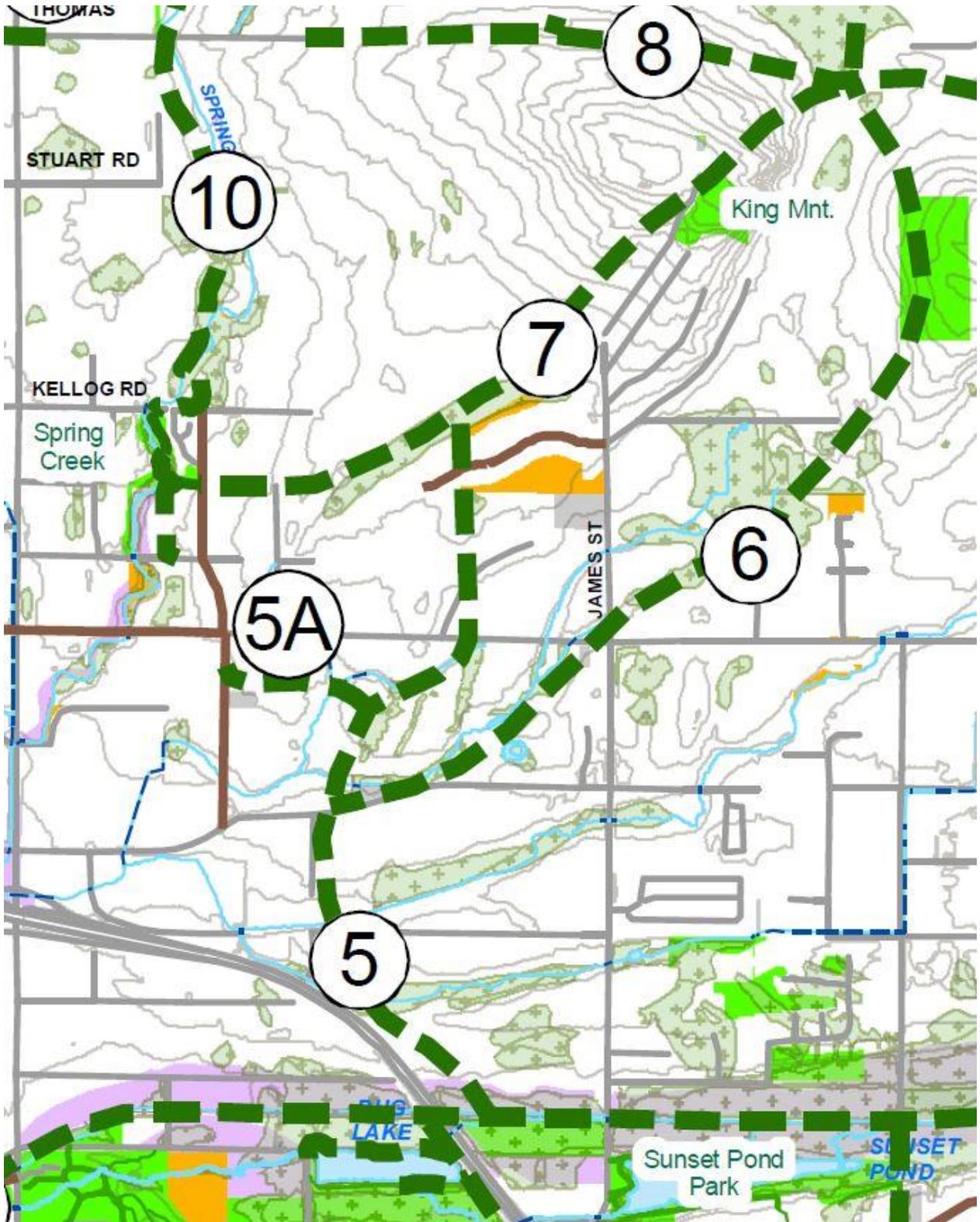


Figure 3. North Bellingham Trails Plan Surrounding James Street

Project #15: James Street Multimodal Safety Improvements (East Orchard Drive to East Bakerview Road)

PROJECT NARRATIVE: James Street is the only north-south transportation corridor serving north-central Bellingham between Meridian (SR 539) and Hannegan, which is already zoned for up to 2,000 new housing units. James Street also provides access to Sunset Pond Park between Sunset and East Bakerview. A vertical curve on the hill between Orchard and McLeod may require elimination of a sight distance issue, but more investigation is required. Pedestrian and Bicycle Master Plans call for sidewalks and bike lanes on James Street and WTA rerouted the high-frequency Gold GO Line Route 331 to travel on James Street-Telegraph Road-Deemer Road in both directions in March 2017.

MULTIMODAL TRANSPORTATION BENEFITS: Tier 3 sidewalks, Tier 3 bicycle lanes, turn lanes, increased access, safety, sight distance, and efficiency. WTA Gold GO Line high-frequency transit route 331 in 2017 and possible future WTA transit routes as King Mountain Neighborhood develops.

PROJECT STATUS: Unfunded. State and federal grant funding will be sought.

No.	PROJECT DESCRIPTION	FUNDING SOURCE	Cost Estimates (000's) 2018 Dollars						PROJECT TOTALS
			Previous Budget	FUNDED 2019	2020	2021	UNFUNDED 2022 2023 2024		
15	James Street Multimodal Safety Improvements (E Orchard to Bakerview) (Safety & Feasibility Study)	Street		50					
		Pvt Mitigation							
		Unknown					7,000		
		Subtotal		50				7,000	7,000

TRANSPORTATION IMPACT FEES COLLECTED

Yes, for local funds

RIGHT-OF-WAY ACQUISITION NECESSARY

Not yet known

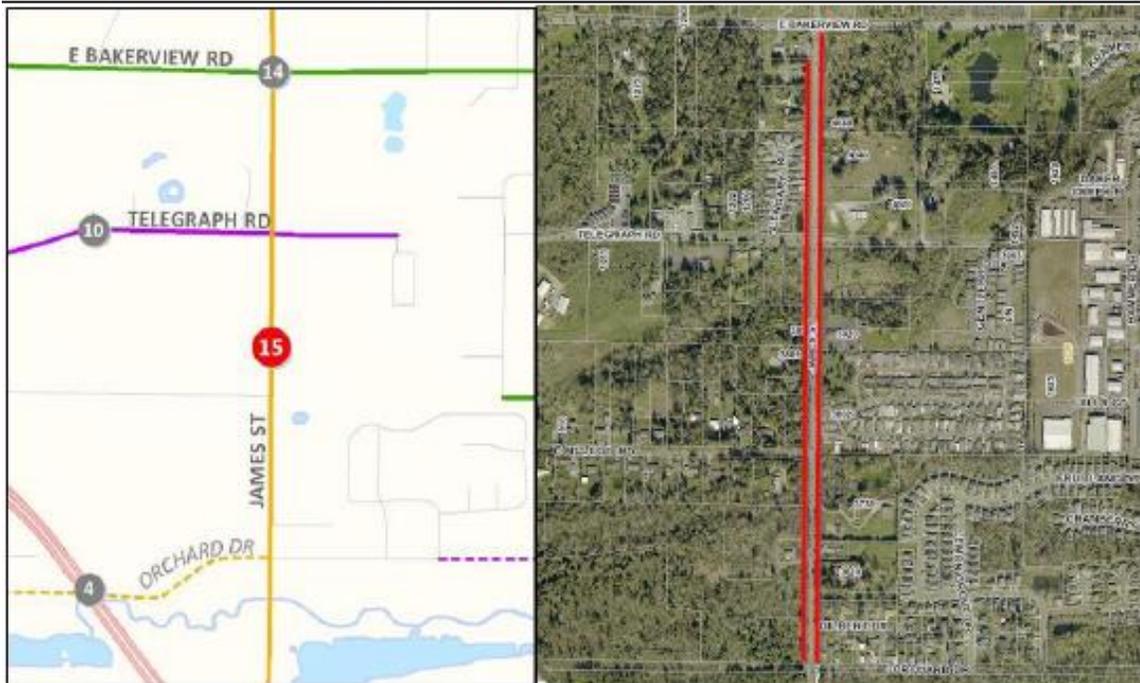


Figure 4. James Street is Programmed for Improvements in Bellingham's 2019-2024 TIP

1.2 Expertise

The consultant performing the **James Street Multimodal Feasibility Study** shall have exceptional knowledge and demonstrated experience with the following:

- WSDOT and FHWA standards
- MUTCD, NACTO, and AASHTO standards and guidance for bicycle facilities
- The following Bellingham multimodal transportation plans:
 - Transportation Improvement Program (2019-2024);
 - Comprehensive Plan, Multimodal Transportation Chapter (2016);
 - Bicycle Master Plan (2014); and
 - Pedestrian Master Plan (2012).
- City of Bellingham Development Guidelines and Improvement Standards, and the Bellingham Municipal Code
- City of Bellingham and Department of Ecology standards for storm water management, per the most recently adopted version of the SWMMWW.
- Department of Ecology Low Impact Development design specifications for storm water best management practices, including bioretention and permeable pavement.
- ADA Requirements
- Traffic control signal system design
- Design of appurtenances related to both wet and dry utilities within public Rights-of-Way
- Permitting of similar projects at the local, state, and federal levels

1.3 Preparation Costs

The City of Bellingham shall not be responsible for qualification submittal preparation costs, including oral interviews (if held), nor for costs including attorney fees associated with any challenge to the determination of the highest ranked proposer and/or award of contract and /or rejection of qualification submittal. By submitting a submittal of qualifications each proposer agrees to be bound in this respect and waives all claims to such costs and fees.

Section 2 - Scope of Work

2.1 General

The City is seeking technical transportation planning and engineering assistance to:

- 1.) Analyze multiple alternatives for constructing ADA-compliant pedestrian, bicycle, and transit-supportive improvements on the James Street corridor;
- 2.) Identify preferred alternatives by arterial segment based on benefit-to-cost analysis;
- 3.) Develop all preferred alternatives to 30% design with cost estimates for construction;
- 4.) Develop a financially feasible phasing plan for construction; and
- 5.) Identify local, state, and federal funding options.

Plans and estimate of costs shall be prepared and stamped by a Professional Engineer licensed in the State of Washington. Other services may include geotechnical evaluation, construction management, public outreach, etc. The Consultant should include all required survey in the project design scope. The City will provide general public utility locations via existing geographic information system (GIS) data. No right-of-way acquisition is anticipated.

The work requires familiarity with all current FHWA and WSDOT design standards, as well as general road construction to current WSDOT Standard Specifications. All plans developed by the consultant will require the stamp of a Professional Engineer licensed in the State of Washington.

2.2 Expectations

The following is a general list of the key items of work. Consultants are encouraged to demonstrate their specific knowledge of the project site and to include any additional issues/ideas that may be appropriate to successful completion of this project.

- Conduct field investigation of James Street corridor and existing and emerging development in the surrounding neighborhood with City staff.
- Prepare an in-depth feasibility study and a final report evaluating urban roadway improvement alternatives to include pedestrian and bicycle facilities, storm water conveyance, center turn lane or left-turn pockets (where feasible), crosswalks, street lights, bus pull-outs (where feasible), and bus shelters.
- Prepare a matrix listing pros, cons, and issues associated with each alternative studied.
- Generate electronic base map and digital terrain model from field survey information using AutoCAD Civil 3D (2018) in accordance with City of Bellingham CAD Standards - <https://www.cob.org/gov/rules/standards/Pages/CAD-Standards.aspx>
- Prepare plans, specifications, and cost estimates at the 30% level.
- Provide support to City staff at a public “Open House” style meeting.

2.3 Time for Completion

The schedule proposed by the City is shown in Figure 5; below:

Figure 5. James Street Multimodal Feasibility Study Timeline		
December	2018	Request for Qualifications
January	2019	Consultant selection, contract negotiation
February	2019	Notice to Proceed, Kick-off meeting
February	2019	Develop Range of Alternatives to Study
March	2019	Completion of Pros/Cons/Issues for Study Alternatives
March	2019	Selection of Financially Feasible Preferred Alternative
April-May	2019	Development of 30% Design and P.E. Cost Estimates
June	2019	Develop Phased Construction plan & Identify Funding Options
June	2019	Adoption of Preferred Alternative in 2020-2025 TIP
June	2019	Develop Phased Construction Plan & Identify Funding Options
July	2019	Final Report and Project Completion

2.4 Budget

This feasibility study will be funded by local Street Funding totaling approximately \$100,000 to include all planning, engineering, surveying, and design costs. Funding for the project is subject to change.

Section 3 - Submission Parameters

3.1 General

The intent of this Request for Qualifications is to obtain professional services from a qualified firm or team that agrees to any and all portions of the advertised project. The City reserves the right to delegate portions of the project to professionals employed by the City. The City reserves the right to reject any or all submittals and also waive any irregularities and/or formalities.

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

Submittals shall be limited to a maximum of twelve (12) 8-1/2" by 11" pages (12 single-sided or 6 pages double-sided), not including the title page (limited to one page), table of contents (limited to one page), and resumes (limited to 1 page for each individual). **Submittals over the maximum page size limit will not be considered.**

The following is a sample format for submittals. Consultants must organize their qualification submittals in the manner specified below.

3.2 Title Page

Show the RFQ number, project number and name, the name of your firm, address, e-mail address, telephone number, name of contact person, name of Principal in Charge, and date.

3.3 Table of Contents

Clearly identify the materials by section number.

3.4 Letter of Transmittal

Briefly describe your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.

Give the name of the Principal in Charge, the name(s) of the person(s) who are authorized to make representations for your firm, their titles, address, e-mail address, and telephone number. The letter must be signed by a corporate officer or other individual with authority to bind the firm.

3.5 Qualification Submittal Contents

Qualification submittals should contain, but not necessarily be limited to the following:

Firm Qualifications & Experience: Describe firm qualifications and experience. Include examples of similar previous experience in developing engineering plans for projects of similar size and scope.

Project Manager: Identify the project manager, including his/her specific qualifications and experience related to the project.

Team Organization: Show the organization of the proposed team. Include project management and methodology. Talk about any supporting functions such as survey, geotechnical investigation, etc.

Project Approach and Understanding: Describe the firm's understanding of the project and the specific approach the firm will use to achieve a successful project.

Technical Knowledge and Qualifications: Discuss the firm's resources available to the project manager including key personnel to be assigned within the firm and from sub-consulting firms. Include resumes for all personnel to be assigned to this project. Include proposed sub-consultants' firms, team members' names, qualifications, certifications, etc. Include technical knowledge of both planning and design.

Schedule & Management: Discuss other resources available to the project manager, the firm's current workload size and ability to manage project schedules. Show documentation of project history. Outline a schedule that shows how the design team will meet project goals and requirements within the proposed time for completion in Section 2.3.

Ease of access to the firm's project staff: Describe firm's physical availability to the City in terms of communication, conducting meetings and field work. How will distance from the project site and the City affect the response time to critical matters pertaining to the project?

References: Include references.

3.6 Signature Requirements

All qualification submittals must be signed. A qualification submittal may be signed by: an officer or other agent of a corporate vendor, if authorized to sign contracts on its behalf; a member of a partnership; the owner of a privately owned vendor; or other agent if properly authorized by power of attorney or equivalent document. The name of the individual(s) signing the qualification submittal must be clearly shown immediately below the signature. Please ensure firm's name, address, telephone number, main point of contact and the e-mail address for the main point of contact for the project are included.

3.7 Submission

The City of Bellingham must receive five (5) copies of the qualification submittal prior to the date and time specified in the advertisement. All copies must be under sealed cover and plainly marked with the RFQ name, number, and the name of the submitter.

Qualifications submittals shall be delivered to:

City of Bellingham Purchasing Division
2221 Pacific Street
Bellingham, Washington 98229

Do not address your submittals to an individual. The City is not responsible for lost or misdirected submittals.

3.8 Disposition of Qualification Submittals

All materials submitted in response to this RFQ will become the property of the City of Bellingham. One copy shall be retained by the City for the official files of the Purchasing Division and will become part of the public record after award of the contract.

3.9 Oral Change/Interpretation

No oral change or interpretation of any provision contained in this RFQ is valid whether issued at a pre-qualification submittal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to qualification submittal documents are deemed necessary by the City.

3.10 Modification/Withdrawal of Qualification Submittals

A respondent may withdraw a qualification submittal at any time prior to the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency to the Purchasing Office. The respondent may thereafter submit a new qualification submittal prior to the final submission date or submit written modification or addition to a qualification submittal prior to the final submission date. Modifications offered in any other manner, oral, or written will not be considered. A final qualification submittal cannot be changed or withdrawn after the final submission date, except for modifications requested by the City after the date of receipt and following oral presentations.

3.11 Late Submissions

Submittals must be received by **Friday, January 4, 2019 at 11:00am**. Proposals received after this date and time will not be considered and returned unopened. The City of Bellingham is not responsible for lost or misdirected submittals.

3.12 Acceptance Period

Award of this RFQ is anticipated to be announced within 60 calendar days from the submission due date, although all offers must be complete and irrevocable for 90 calendar days following the submission date.

Section 4 – Evaluation Criteria and Process

4.1 Evaluation Criteria

Qualification submittals will be evaluated and ranked on the following criteria and point range.

- | | |
|---|-------------|
| • firm qualification & experience | 0-20 points |
| • project manager | 0-10 points |
| • team organization and project management techniques | 0-10 points |
| • project approach and understanding | 0-20 points |
| • technical knowledge and qualifications | 0-20 points |
| • schedule and management | 0-5 points |

- ease of access to the firm’s project staff 0-5 points
- past performance and references 0-10 points
- total possible score 100 points

4.2 Evaluation Process

A selection committee of individuals representing the City will evaluate the qualification submittals as submitted. The City reserves the right to award a contract solely on the written qualification submittal.

The City also reserves the right to request oral interviews with the highest ranked firms. The purpose of these interviews is to allow expansion upon the written responses. The same evaluation criteria may be used for the interviews. The final selection may be based on the total of all evaluators’ scores or just the scores from the interview process.

The selection committee may request additional information to be submitted and/or ask additional questions during the interview. The lead firm’s project manager shall be present for the interview and she/he may bring primary team members only. Each sub-consultant’s key team member is encouraged to be present for the interview.

4.3 Selection Process

The firm with the highest total evaluation points may be invited to enter into contract negotiation with the City. If an agreement cannot be reached, the second highest ranked proposer may be contacted for negotiations. This process may continue until successful negotiations have been achieved. The City reserves the right to terminate negotiations with any proposer should it be in the City’s best interest.

Section 5 – Sample Contract

The successful firm will be required to enter into a contract with the City, which will be similar to the sample contract attached.

Section 6 – Contact Information

Upon release of this RFQ, all communications concerning the submittal process shall be directed to the Purchasing Office. All technical inquiries about this RFQ shall be submitted through the City’s procurement portal (www.ebidexchange.com/bellingham). Questions will be gathered and an addendum will be issued through the procurement portal.

Unauthorized contact regarding this RFQ with other City employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City.

ATTACHMENT A

SAMPLE AGREEMENT FOR CONSULTANT SERVICES

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

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

II. RESPONSIBLE OFFICERS.

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

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

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

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

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

IV. PAYMENT.

A. The maximum payable to Consultant under this Agreement is \$ _____, which amount shall be inclusive of any State sales tax payable by Consultant.

B. Payments to the Consultant will be made monthly for work done during the previous month, based on invoices submitted to the Project Manager. A short narrative progress report shall accompany each invoice, which report shall discuss any problems or potential causes for delay, with the status of the Project, amount of work completed, and other relevant information.

C. The cost records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City or any other governmental agency with jurisdiction for a period of three (3) years after final payment.

D. The basis for payment hereunder is: See Exhibit "B" attached and incorporated herein by this reference.

V. ADDITIONAL CONTRACT TERMS AND CONDITIONS.

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

VI. CHANGES AND ADDITIONAL WORK.

- A. Upon request of the City, the Consultant shall make such revisions in work done under this Agreement as are necessary to correct errors or omissions appearing therein and make such other minor revisions as are reasonably requested, without additional compensation therefor.

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

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

Exceptions are as follows: None

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

- A. The Consultant shall prepare such information and studies as may be pertinent and necessary, or as may be requested by the City, in order that the City may pass critical judgment on the features of the work. Compliance with the foregoing provision shall not constitute additional work as described in this Agreement.

- B. All documents, maps, and other materials of whatever kind prepared by the Consultant pursuant to this Agreement shall be deemed property of the City upon completion of the Project or termination of this Agreement. The Consultant may keep file copies of its work product but shall retain no other rights of ownership therein.

IX. TIME OF BEGINNING AND COMPLETION.

- A. The Consultant shall not begin work under the terms of this Agreement until authorized in writing by the City's Project Manager. The completion time for all work under this Agreement shall be the Project schedule contained in the Scope of Work.
- B. Established completion time is a material part of this Agreement and shall not be extended because of any unwarranted delays attributable to the Consultant. However, it may be extended by the City in the event of a delay attributable to the City or because of unavoidable delays caused by an act of God or other conditions beyond the control of the Consultant.

X. RELATIONSHIP OF THE PARTIES; SUBCONTRACTING.

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or in its discretion to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, gift or contingent fee.
- B. During the term of this Agreement, the Consultant shall not engage, on a full-time, part-time, or other basis, any professional or technical personnel who are, or have been at any time during the term of this Agreement, in the employ of the City (except regularly retired employees) without written consent of the City.
- C. This Agreement is for the performance of professional services. The parties intend that the Consultant shall be an independent contractor in the performance of services rendered pursuant hereto. To this end, Consultant represents that it is customarily in the business of providing the services described in this Agreement, has its own place of business, is eligible for and does file with the Internal Revenue Service a schedule of business expenses, has established or will timely establish an account with the State Department of Revenue and has received a unified business identifier number, and maintains a separate set of books and records for such business.
- D. Any and all employees of the Consultant while engaged in the performance of any work or services required by the Consultant under this Agreement shall be considered employees of the Consultant only and not of the City. Any and all claims that may or might arise under the Workers Compensation Act on behalf of said employees while so engaged on any of the work or services to be rendered herein shall be the sole obligation and responsibility of the Consultant.
- E. None of the services covered by this Agreement shall be subcontracted by the Consultant without the prior written consent of the City, executed by its Project Manager. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. The Consultant shall insert in each subcontract appropriate provisions requiring compliance with the provisions of this Agreement, and subcontractors shall be deemed to be bound by all the terms hereof.

XI. CONFLICT OF INTEREST.

- A. Consultant covenants that it presently has no pecuniary or proprietary interest and shall not acquire any such interests, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person or subcontractor having such interest shall be employed.
- B. No members of the City government, and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the Project shall have any personal interest, direct or indirect, in this Agreement.

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

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

XIII. TERMINATION.

- A. In the event of the death of a member, partner, or officer of the Consultant, or any of its supervisory personnel assigned to the Project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement if requested to do so by the City in its sole discretion.
- B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints, and prior to its normal completion, the City may summarily terminate this Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof. Nothing herein prevents Consultant from being paid sums, duly documented, for work performed prior to termination.

- C. Should either party hereto believe that the other has failed to substantially perform all or a material part of its obligations under the Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail). In the event of termination under this subparagraph, the Consultant shall be paid an amount, in the discretion of the Project Manager, which takes into account actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, the cost to the City of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, along with any other factors which affect the value to the City of the Project work which has been performed to the date of termination. In no event shall the Consultant receive an amount based on anticipated profit on unperformed services or other work.
- D. Upon receipt of a termination notice, the Consultant shall promptly discontinue all services affected unless the notice directs otherwise, and shall promptly deliver or otherwise make available to the City all data, drawings, specifications, calculations, reports, estimates, summaries, and such other information and materials as the Consultant or its subconsultants may have accumulated in performing this Agreement, whether completed or in progress, and shall also make available all equipment and/or materials purchased specifically for the Project where the City has reimbursed the Consultant therefor. The City may thereafter, at its sole option, take over the work and prosecute the same to completion by whatever means it chooses. Consultant shall have the right, during the termination notice period, to complete such analyses and records as necessary to place its files in order and, when necessary for protection of its professional reputation, to produce a report of services completed to the date of termination.
- E. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

XIV. LEGAL RELATIONS AND INSURANCE.

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all City ordinances and resolutions, and federal and state grant agreements and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- B. The Consultant shall defend, indemnify and hold harmless the City, its officers, employees, principals and agents from any and all injury or damage to the City or its property, and also from all claims, demands, causes of action, or suits of any kind that arise directly or indirectly out of, incident to, or due to any actual or alleged negligence, intentional tort, or breach of duty by the Consultant, its agents, employees, representatives or subcontractors in performing work and services under this Agreement, except for injuries and damages caused by the sole negligence of the City.
- C. In the event any claim, suits, or actions result from the concurrent negligence of (a) the City or the City's agents or employees and (b) the Consultant or the Consultant's agents or employees,

the defense and indemnity provisions in the preceding paragraph of this section shall be valid and enforceable only to the extent of the Consultant's negligence or the negligence of its agents and employees.

- D. The Consultant specifically agrees to defend and indemnify the City from claims or suits brought by Consultant's own employees against the City. For this purpose, Consultant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts. This waiver has been mutually negotiated by the parties.
- E. The City's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- F. Prior to execution of the Agreement, the Consultant shall file with the City appropriate evidence of insurance from insurer(s) certifying to the coverage of all insurance required herein and which will be subject to approval by the City. In the event that the Consultant is unable, through no fault or neglect, to maintain such insurance, the City shall have the right to terminate the Agreement pursuant to paragraph XII after giving the Consultant a reasonable opportunity to find alternate insurance coverage acceptable to the City. All insurance policies shall be endorsed to require the insurer to provide thirty days' notice of cancellation.
- G. The Consultant shall require that all subcontractors obtain and maintain comprehensive general liability, professional liability and workers compensation insurance appropriate and applicable to the scope of work and services to be performed by such subconsultants. It shall be the responsibility of the Consultant to initially determine the appropriate and applicable insurance coverage, which will be submitted to the City for approval. The Consultant shall furnish to the City insurance certificates for all subcontractors.
- H. The Consultant shall obtain and maintain the minimum limits of liability insurance set forth below. By requiring such minimum limits, the City shall not be deemed to have assessed the risks which may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems it appropriate and prudent, maintain greater limits. The insurance of the Consultant shall be primary and non-contributory with any insurance for which the City is a named insured. The City and its officials and employees shall be named as additional insureds on all liability insurance policies (together with the required endorsement), except professional liability insurance. Said insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Such policies shall provide the coverage required as follows for any and all occurrences arising out of the Consultant's performance under this Agreement:
 - 1. Broad form Commercial General Liability, affording limits of liability of \$1,000,000.00 per occurrence for bodily injury, personal injury, and property damage and \$2,000,000.00 in the aggregate.
 - 2. Automobile liability affording limits of liability of \$1,000,000.00 as a combined single limit per accident for bodily injury and property damage.

3. Professional liability insurance, affording limits of liability of \$1,000,000.00 in the aggregate covering all professional activities performed under this Agreement. If the insurance maintained by the Consultant is maintained on a "claims made" basis rather than an occurrence basis, said insurance shall be continued by the Consultant until at least five years after the date of the completion of the Project.
4. Workers Compensation coverage as required by the laws of the State of Washington. Except with regard to Professional Liability Insurance and Workers Compensation coverage, all insurance coverages required under this Agreement shall include a waiver of subrogation against the City for losses arising from work performed by the Consultant.

- XV. ASSIGNMENT.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the prior, express written consent of the City.
- XVI. ENDORSEMENT ON PLANS.** If this Agreement involves design for a construction project, the Consultant shall place the endorsement of a licensed engineer or architect on all plans, specifications, estimates or any other design data Consultant furnishes. In any event, all materials prepared by the Consultant hereunder are property of the City, and Consultant retains no right of ownership or copyright therein.
- XVII. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES:** The Consultant agrees that it will comply with all State and local non-discrimination laws and regulations in effect at the time this Agreement is executed. The Consultant shall comply with all Federal non-discrimination laws and regulations if any of this Agreement is financed with Federal funds.
- XVIII. COMPLIANCE WITH LOCAL LAWS:** The Consultant shall be duly licensed (including Business Registration with the City of Bellingham) and shall comply with all applicable laws, ordinances, and codes of the State and local governments.
- XIX. EFFECT OF ACCEPTANCE OF THE WORK.** Approval of plans, specifications or other documents shall not constitute nor be deemed a release of the responsibility of the Consultant, its employees, subcontractors, or agents for the accuracy and competency of their work, nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the work prepared by the Consultant, its employees, subcontractors, or agents.
- XX. ACCOUNTING AND AUDIT:** The Consultant agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.
- XXI. NOTICE.** Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth herein below:

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

Attn:

Consultant:

Attn:

XXII. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all other prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Agreement.

EXECUTED, this _____ day of _____, 2018, for the Consultant.

Authorized Signature

Printed Name and Title

EXECUTED, this _____ day of _____, 2018, for the **CITY OF BELLINGHAM:**

Departmental Approval:

5.1 Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney