

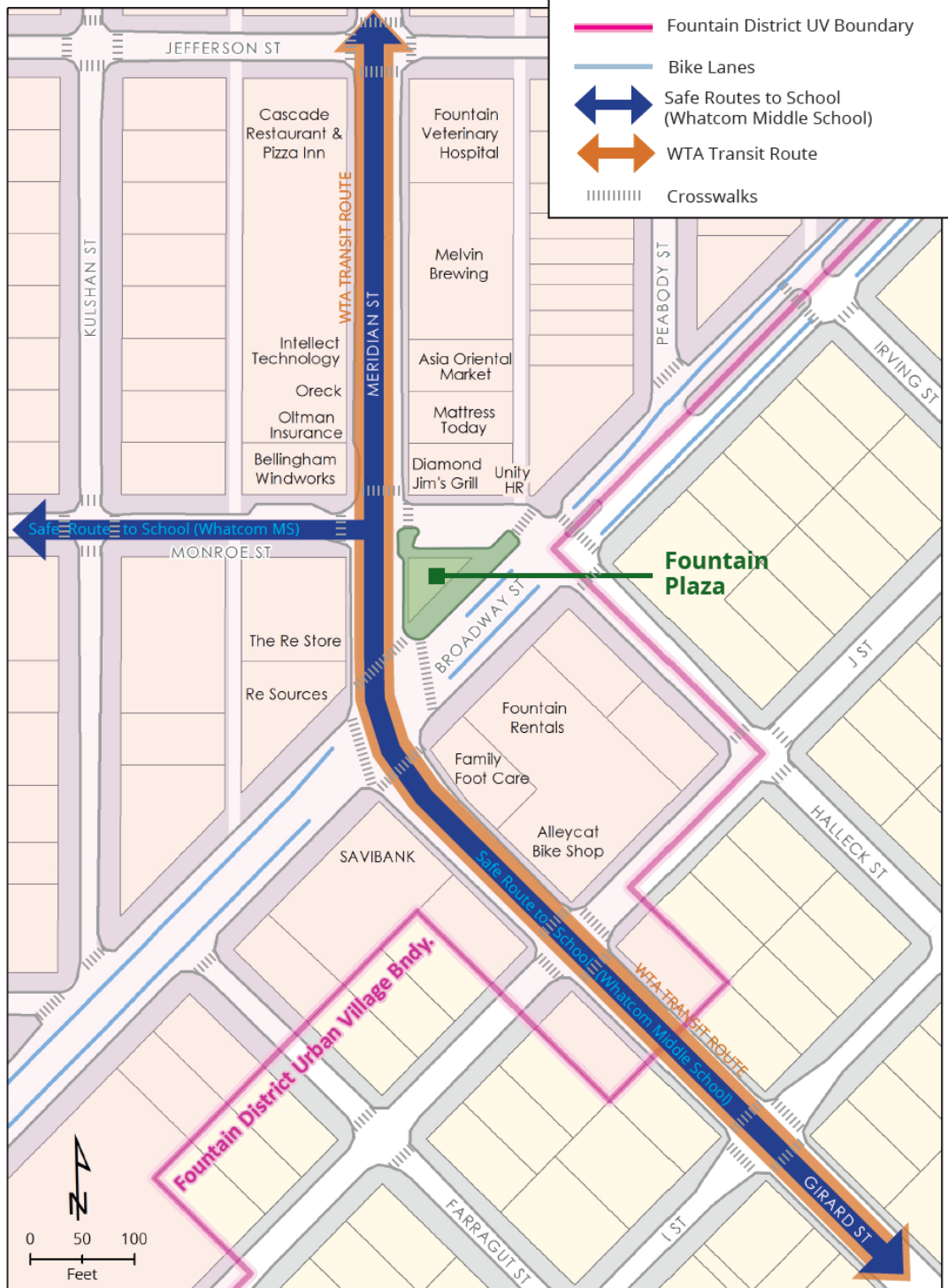


# Fountain Plaza Design

Request for Qualifications  
#46B-2018

**Optional Pre-Proposal Conference:** Thursday, June 21, 2018 at 12:00 Noon,  
Meet at Fountain Plaza

**Proposals Due: No later than Tuesday, July 3, 2018 at 11:00 AM, PDST**  
City of Bellingham, Purchasing Office  
2221 Pacific Street  
Bellingham, WA 98226



# Fountain Plaza Design

Request for Qualifications (RFQ)

## Section 1 – General Information

### 1.1 Purpose

The City of Bellingham is soliciting statements of qualification from interested consultants to provide services for the redesign of Fountain Plaza, located at the corner of Meridian and Broadway Streets.

### 1.2 Background

The Fountain Plaza historically provided fresh water for animals and livestock traveling from Bellingham to the county and beyond to Canada. The property was dedicated as a public space with the condition that water continue to be provided for man and beast.

The advent of the streetcar led to the “Fountain Square” evolving into the center of a new commercial area at the convergence of the Cornwall, Lettered Streets and Columbia neighborhoods, now known as the Fountain District. Fountain Plaza continues to serve as a gateway to the commercial district and a respite for all modes of travel, including transit riders and children traveling to and from Whatcom Middle School. It is the only public open space within the urban village.

In 2007, community interest in the reactivation of the plaza spurred a series of privately-sponsored and grant-funded design meetings. This led to the development of a conceptual design plan, which was approved by the City’s Parks and Recreation Board in 2008.

**(ATTACHMENT A – DESIGN CONCEPT).**

This concept design was discussed and refined during the City-led community engagement process for development of the 2010 Fountain District Urban Village Plan: <https://www.cob.org/services/planning/urban-villages/fountain>. The Plan contains broad goals and policies for improving the plaza and surrounding area:

- Encourage design consistency for the commercial core by coordinating plantings along Meridian Street with those in the Fountain Plaza Park (FUVp p. 26).
- Incorporate some or all of the following amenities: water feature, places to rest, sit and socialize; landscaping that incorporates native trees, shrubs and groundcover; interactive, sculptural or naturalistic furniture; public art; pedestrian-scale lighting; and/or other elements that promote public use (FUVp p. 35).

The Plan also recommends improvements to the block of Monroe Street adjacent to the plaza to create a “festival street”, allowing for easy closure to accommodate community events while retaining on-street parking for typical daily use. These improvements were completed in 2013. The scope of this design project is within the curb line of the three abutting streets.

The plaza is currently served by Puget Sound Energy electrical service and City sanitary sewer and water services. See **ATTACHMENT B – TOPOGRAPHICAL SURVEY** for additional detail.

*NOTE: 2007 SURVEY MAY NOT REFLECT THE CURRENT PLACEMENT OF ALL FEATURES.*

### **1.3 Project Goals**

A summary of the Strengths, Weaknesses, Opportunities and Threats (SWOT) gathered from prior community outreach efforts (**ATTACHMENT C – SWOT ANALYSIS**) has been vetted by the Fountain Plaza Steering Committee, which includes representatives of various stakeholder groups and City staff. This document provides the initial basis for design, to be further refined in partnership with the selected Contractor and Fountain Plaza Steering Committee.

The overarching goal of the project is to maximize the use of a relatively small space (~3,000 square feet) to create a pleasant and well-used amenity that improves and defines the image of the Fountain District. Strategies should include, but not be limited to:

- a. Design of a signature fountain to reinforce the district’s namesake and provide a celebrated gateway;
- b. Incorporation of artwork or other interpretive elements that highlight the history of the plaza, provide interest and define character;
- c. Creation of amenities catering to transit riders, middle school-aged children and customers of the area businesses; and
- d. Incorporation of wayfinding or other elements to connect visitors to nearby attractions.

### **1.4 Project Budget**

The total project budget is approximately \$380,000 for the design and construction of the plaza improvements and all associated amenities.

The Maximum Allowable Construction Cost (MACC) is \$250,000, which ***includes*** sales tax and the installation of a signature fountain and all site amenities. The MACC does not include design, permit, materials testing, construction survey, or advertising.



## 1.5 Desired Qualifications

Selection of the project consultant will be based on the statement of qualifications identifying the following expertise:

- a. Design experience relating to landscape architecture, civil engineering, design of small urban public places, placemaking, cost estimating, and project management;
- b. City of Bellingham Parks and Recreation Design Standards;
- c. City of Bellingham Public Works Development Guidelines and Improvement Standards;
- d. Fountain District Urban Village Plan;
- e. State Environmental Policy Act;
- f. Local permitting processes and requirements;
- g. WSDOE Stormwater Manual for Western Washington and related drainage;
- h. Americans with Disabilities Act requirements relating to outdoor public spaces;
- i. Understanding of applicable Federal, State, and City of Bellingham ordinances, codes, laws and regulations;
- j. International Building Code, International Plumbing Code, International Fire code design; and
- k. Public process and community engagement.

## 1.6 Professional Registration

Plans, specifications, and research reports provided during the life of this project shall be stamped and signed by the respective engineer/landscape architect/architect, licensed in the State of Washington, in accordance with RCW.

## 1.7 Insurance

The project consultant must be able to provide proof of required insurance and an endorsement listing the City as additional insured during the duration of the project. Coverage shall include but is not limited to:

➤ Workers Compensation	Statutory Amount
➤ Automobile Liability	\$1,000,000
➤ Broad Form Comprehensive Liability	\$1,000,000/occurrence
	\$2,000,000 aggregate

## 1.8 Preparation Costs

The City of Bellingham shall not be responsible for costs related to the preparation of the statement of qualification, oral interviews (if held), nor for costs including attorney fees

associated with any challenge to the determination of the highest ranked respondent and/or award of contract and /or rejection of qualification submittal. By submitting a response, the proponent agrees to be bound in this respect and waives all claims to such costs and fees.

## **1.9 Consultant Fees**

The respondent accepts that by submitting a statement of qualifications they agree to the following parameters, and will provide the required verification following final consultant selection.

- a) Consultant and Subconsultant hourly rates shall include overhead and profit. All indirect and direct costs shall be included in the hourly rate provided. Indirect and direct costs include, but are not limited to, items such as base salary, fringe benefits, sick leave, vacation, holiday pay, unemployment taxes, social security, workman's compensation, insurance, office expenses, telephone, mailing, postage, computer time, and other expenses. The City may request an itemization of overhead costs.

Reproduction costs may only be billed if copies are made at the City's request, such as plan sets for bidding. This also includes overnight shipping. Costs will be paid at invoice only, no additional mark-up will be allowed.

- b) Travel expenses will be reimbursed at the Federal and State government per diem rates including meals and mileage with no additional overhead. No additional subsistence is allowed.
- c) Items purchased and reimbursed by the City project must be furnished to the City. Items purchased are reimbursed at invoice cost. Invoice must be provided.
- d) Rental of equipment may be added at invoice cost only. Invoice must be provided.
- e) A mark up on Subconsultants by the prime Consultant is not allowed.
- f) The Consultant shall be allowed 10% fee on direct costs related to administering and incorporating Subconsultant related products into the project.
- g) Consultant shall submit his/her firm's established overhead rate and supporting documentation for most recent fiscal year. The agreed upon overhead rate shall remain in effect for the life of the contract.

## **Section 2 - Scope of Work**

### **2.1 Services Provided**

The selected consultant shall provide the following design services:

- a. Plans, including renderings,
- b. Structural engineering,
- c. Specifications,
- d. Cost estimates,
- e. Product information for each design phase from concept to 100%,
- f. Environmental documentation and building permit assistance,
- g. Bid phase services, and
- h. Construction administration services.

Contract documents shall be complete, high-quality, biddable and buildable to meet contract MACC limit.

### **2.2 Tasks Required**

- a. Assemble design team;
- b. Visit the site and perform reconnaissance/inventory/interviews/analysis to refine goals and strategies;
- c. Review and incorporate survey, geotechnical reports, and other base information into base maps;
- d. Develop design alternatives, including colored renderings, for review and consideration by staff and stakeholders;
- e. Review and refine a preliminary estimate of materials, making recommendations for adjustments to best fit MACC;
- f. Run earthwork/grading calculations for cost estimate;
- g. Provide independent cost estimates, as required;
- h. Anticipate/consider potential impacts to cost of construction by permitting requirements, storm water management, etc;
- i. Provide updated cost estimates, potentially including additive, deductive, or alternate schedules;
- j. Prepare SEPA checklist and any other required environmental or permit documentation;
- k. Design Phases: Plans, Specifications and Estimates:  
30%, 60%, 90% check in, and 100% Bid Ready
- l. Attend/conduct meetings with COB project manager as follows:
  - i. one project kick off, onsite
  - ii. one end of 30% with steering committee, to review alternatives
  - iii. one at 60%, 90%, 100% as needed

- m. Provide bidding & construction services to include: attendance of pre-bid and pre-construction meeting, preconstruction meeting, construction milestone inspection, submittal review, draft design change notice, process contractor's request for information, review change orders;
- n. Prepare construction as-builts.

### **2.3 Expectations**

The Scope of Work shall include all services and materials necessary to accomplish the work, as follows:

- a. Enter into an agreement for consultant services. See **ATTACHMENT D – SAMPLE CONTRACT** for additional information;
- b. Work within the identified budget;
- c. Continuous management of the project, maintaining close contact with COB Project Manager;
- d. Frequent communications with the City during the life of the project, via phone and e-mail.

### **2.4 Time of Completion**

The project goal is to begin construction Spring 2019. The City will work with the selected consultant to develop a timeline with milestones to achieve this goal.

### **Section 3 - Submission Parameters**

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

Qualification submittals are to be prepared in such a way as to provide a straightforward, concise delineation of the proposer's capabilities to satisfy the requirements of this RFQ. Emphasis will be concentrated on:

- Conformance to the RFQ instructions;
- Responsiveness to the RFQ requirements; and,
- Overall completeness and clarity of content.

Submittals shall be limited to 16 pages (8 double-sided pages). Resumes and any other pages submitted will be counted towards the page limit. Font size shall not be smaller than 10pt., except for headers & footers.

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

#### **3.1 Title Page**

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

#### **3.2 Table of Contents**

Clearly identify the materials by section number.

#### **3.3 Letter of Transmittal**

Briefly describe the understanding of 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 the firm, their titles, address, e-mail address, telephone and facsimile numbers. The letter must be signed by a corporate officer or other individual with authority to bind the firm.

#### **3.4 Qualification Submittal Contents**



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

- a. Identify the Project Manager, including their specific expertise related to master planning, design, and construction. It would be advantageous to list months or years of experience in projects similar in projects of similar scope.
- b. Provide technical knowledge of the firm and Subconsultants(s) with respect to the specific services required for this project. Include any supporting functions such as design software, renderings, public artwork, etc.
- c. Describe the preliminary understanding of the types of challenges and potential solutions in this project. Include project management and design methodology.
- d. Summarize the firm's current workload and ability to manage project schedules and budget, including the ability to adhere to the project schedule. Provide relevant examples of adherence to deadlines and proposed MACC.
- e. Include three (3) professional references, including contact information.

### **3.5 Oral Change/Interpretation**

No oral change or interpretation of any provision contained in this RFQ is valid whether issued at 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.

### **3.6 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 withdrawal, signed by an agent authorized to represent the agency. 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 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/or following oral presentations.

### **3.7 Submission**

The City of Bellingham must receive an electronic pdf (either via email or submitted on a thumb drive) and seven (7) hard copies of the qualification submittal prior to the date and time specified on the cover letter. All copies must be under sealed cover and plainly marked with the RFQ number and subject. Qualification submittals shall be delivered to:

City of Bellingham  
Purchasing Division  
2221 Pacific Street  
Bellingham, Washington 98226

EMAIL PDF TO: [purchasing@cob.org](mailto:purchasing@cob.org)

Submittals must be received no later than 11:00 AM on the deadline in order to receive further consideration.

In an effort to comply with City of Bellingham waste reduction policies, we request that hard copies 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.

## Section 4 – Evaluation Criteria and Process

### 4.1 Evaluation Criteria

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

- a. Experience of Project Manager and other key individuals who will be performing the work. (0-35 points)
- b. Technical knowledge and capacity of supporting functions of the team, such as: graphics, mapping, artwork, etc. (0-25 points)
- c. Project understanding and approach. (0-25 points)
- d. Ability of the firm to begin and complete the work on time and within budget and contract amount. (0-15 points)

**TOTAL POSSIBLE SCORE:**

**100 POINTS**

### 4.2 Evaluation Process

A selection committee of individuals representing the City and stakeholders will evaluate the qualification submittals. 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 (short list). The purpose of these interviews is to allow expansion upon the written responses. If oral interviews are conducted, a maximum of three (3) firms will be short-listed. The final selection will be based on the total of all evaluators' scores achieved in the second rating. The same point range categories will be used during the second evaluation as for the first. The highest ranked respondent after the second scoring, if performed, may be invited to enter into final negotiations with the City for purposes of contracting.

The selection committee may request additional information to be submitted and/or ask additional questions during the interview.

The respondent 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 respondent 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 respondent should it be in the City's best interest. Additional procedures and conditions are included as **Attachment E: Procedures and Conditions**.

#### **4.3 Nondiscrimination Clause**

The City of Bellingham will 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 a contract.

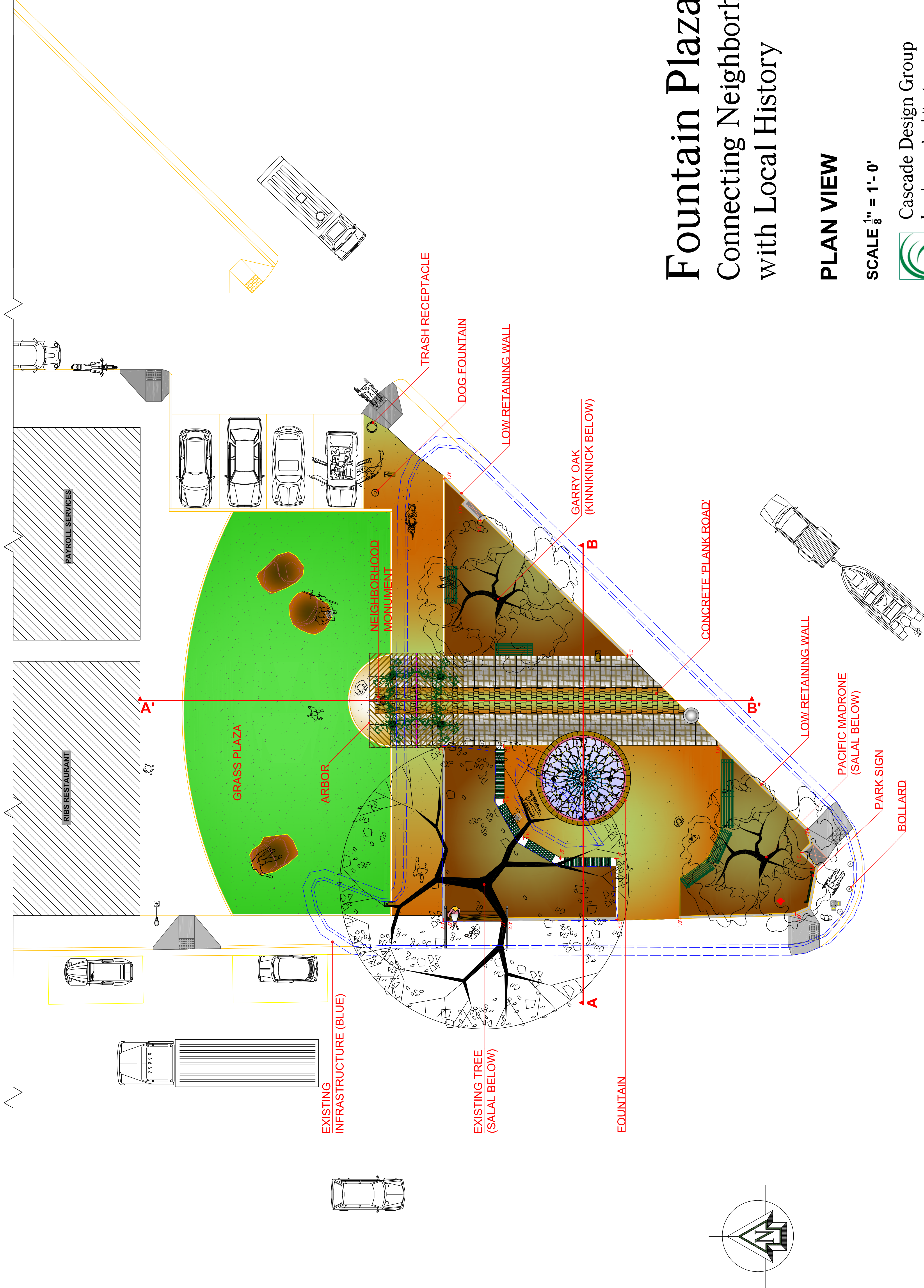
#### **4.4 Environmental Consideration**

The City encourages staff to integrate environmental considerations into every aspect of purchasing supplies, materials, services or construction whenever practicable. Consultants are encouraged to:

- Purchase recycled, PBT-Free and other environmentally preferable products with the maximum amount of post-consumer material as long as the purchase is equal to or less than 120% of the “virgin” product price as established by an annual bid.
- Whenever practical, the Consultants should
  - Specify energy-efficient equipment and appliances, such as Energy Star.
  - Require contractors and Subconsultants to use recycled, PBT-Free and other environmentally preferable products.
  - Utilize mass transportation, alternative or hybrid fuel vehicles for travel to and from the job site and meetings associated with this contract.

**Attachment A**  
**Design Concept**





# Fountain Plaza:

## Connecting Neighborhoods with Local History

PLAN VIEW

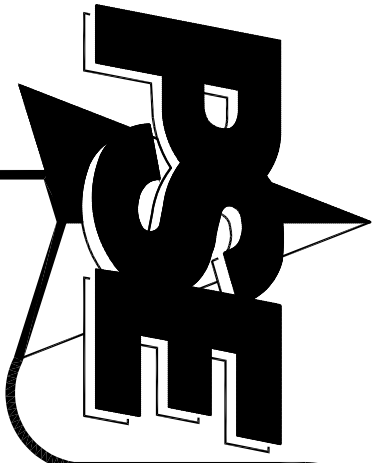
SCALE  $\frac{1}{8}" = 1' - 0"$



Cascade Design Group  
Landscape Architects  
August 2008



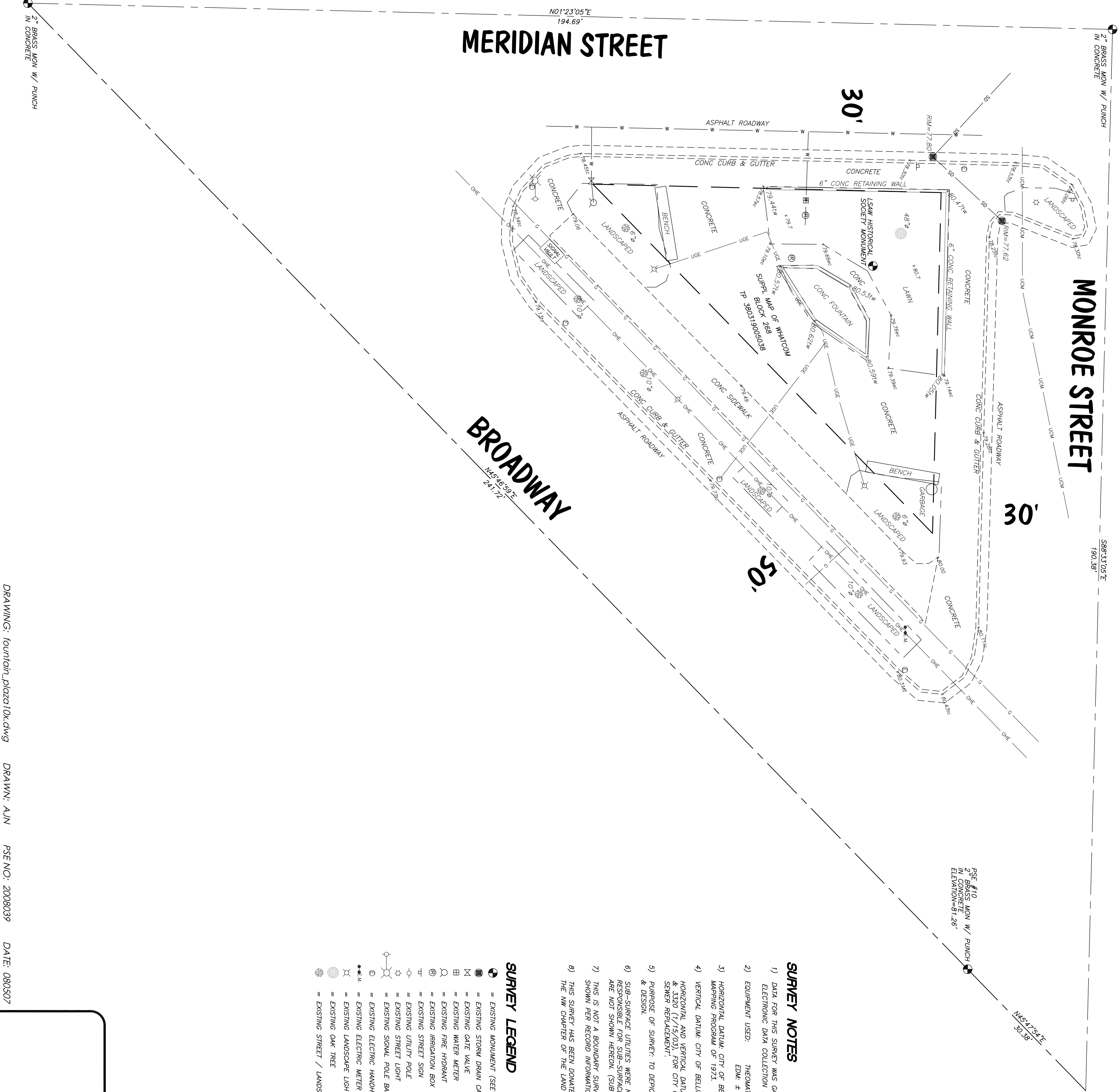
**Attachment B**  
**Topographical Survey**



# FOUNTAIN DISTRICT PLAZA

## TOPOGRAPHIC SURVEY

SITUATE IN A PORTION OF THE SW 1/4 OF SECTION 19, TOWNSHIP 38 NORTH,  
RANGE 3 EAST, W.M., CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON



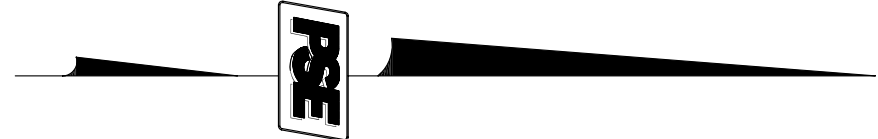
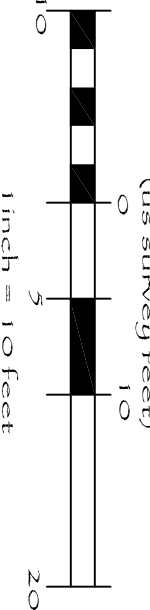
### SURVEY NOTES

- 1) DATA FOR THIS SURVEY WAS GATHERED BY FIELD TRAVERSE UTILIZING ELECTRONIC DATA COLLECTION IN APRIL OF 2008.
- 2) EQUIPMENT USED: THEOMAT 0001.5" EDM: ± 1 PPM, ± 2 MM
- 3) HORIZONTAL DATUM: CITY OF BELLINGHAM COMPREHENSIVE MAPPING MAPPING PROGRAM OF 1973.
- 4) VERTICAL DATUM: CITY OF BELLINGHAM HORIZONTAL AND VERTICAL DATUMS FROM CITY OF BELLINGHAM RS NOS. 3285 (10/9/01) & 3320 (1/15/03), FOR CITY OF BELLINGHAM PROJECT EU-0033, BROADWAY SEWER REPLACEMENT.
- 5) PURPOSE OF SURVEY: TO DEPICT EXISTING SITE CONDITIONS FOR SITE PLANNING & DESIGN.
- 6) SUB-SURFACE UTILITIES WERE NOT LOCATED DURING THIS SURVEY. PSE IS NOT RESPONSIBLE FOR SUB-SURFACE UTILITIES OR UTILITIES NOT SHOWN HEREON. (SUB-SURFACE UTILITIES ARE APPROXIMATE)
- 7) THIS IS NOT A BOUNDARY SURVEY. PARCEL AND RIGHT OF WAY MARGINS ARE SHOWN FOR RECORD INFORMATION.
- 8) THIS SURVEY HAS BEEN DONATED BY PACIFIC SURVEYING & ENGINEERING, INC. & THE NW CHAPTER OF THE LAND SURVEYOR'S ASSOCIATION OF WASHINGTON.

### SURVEY LEGEND

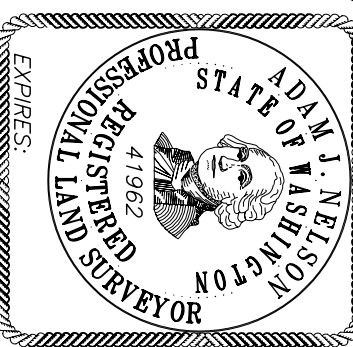
- = EXISTING MONUMENT (SEE DESCRIPTION)
- ⊙ = EXISTING STORM DRAIN CATCH BASIN MANHOLE
- ⊗ = EXISTING GATE VALVE
- ⊕ = EXISTING WATER METER
- ⊖ = EXISTING FIRE HYDRANT
- ⊙ = EXISTING IRRIGATION BOX
- ⊕ = EXISTING STREET SIGN
- ⊖ = EXISTING UTILITY POLE
- ⊙ = EXISTING STREET LIGHT
- ⊕ = EXISTING SIGNAL POLE BASE
- ⊖ = EXISTING ELECTRIC HANDHOLD
- ⊕ = EXISTING ELECTRIC METER
- ⊖ = EXISTING LANDSCAPE LIGHT
- ⊕ = EXISTING OAK TREE
- ⊖ = EXISTING STREET / LANDSCAPE TREE

### GRAPHIC SCALE



## FOUNTAIN DISTRICT PLAZA TOPOGRAPHIC SURVEY

SITUATE IN A PORTION OF THE SW 1/4 OF SECTION 19, TOWNSHIP 38 NORTH,  
RANGE 3 EAST, W.M., CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON



## **Attachment C**

### **Final SWOT**

#### **FOUNTAIN PLAZA DESIGN**

#### **SWOT ANALYSIS – March 28, 2018**

*This analysis is based on staff assessment of the site and notes from prior community engagement*

#### **STRENGTHS**

- Excellent sun exposure
- Potentially inspiring history (plank road, street car stop, watering hole for man and beast, survey significance of Meridian, significant private donation)
- Highly visible, gateway to the Fountain District
- Multimodal activity (transit stop, safe route to school, bike lane on Broadway, parking)
- Adjacent “festival street”, which has already been improved
- Presence of utilities (power, water, sewer) and hardscape
- Convergence of three surrounding neighborhoods (Lettered Streets, Cornwall, Columbia)
- Maple tree provides interest and shade

#### **WEAKNESSES**

- Small space, undefined entry points
- Surrounded by streets (two arterials) and parking
- Existing vegetation limits access and visibility
- Trees in questionable health (maple) or unapproved species (cherry)
- Retaining wall limits pedestrian access/connection to Monroe/Meridian corner and transit stop, limits available space for transit shelter
- Current fountain is unsafe (standing water), unattractive (pipe, mossy concrete), and not easy to maintain (raised edge)
- Unattractive infrastructure (PSE power pole/lines, traffic box)
- Limited seating; seating not designed for appropriate use

#### **OPPORTUNITIES**

- Surrounding neighborhoods have other significant park assets (Elizabeth, Broadway, Cornwall Parks), so the plaza doesn’t need to duplicate a “park-like” setting (urban)
- Creation of a fountain as focal point for the southern entrance to the district.
  - o No pooling water
  - o Vertical to be eye catching, distinct entry, capture interest
  - o Designed for safety of children
- Set character of the district through lighting, artwork, hardscape and other amenities:
  - o Natural, whimsical, element of surprise/exploration (community charrette)?
  - o Modern, music (business, staff)?

- Design inspired from horses/exploration/Cascadian/survey of the west history (community, staff)?
- Other concept?
- Replacement of hardscape = opportunity to add interest/activities (color, texture, embed objects, wayfinding, colors, survey marker, maze/labyrinth, dancing?)
- New landscaping could better support the function and aesthetic of the space
- Addition of lighting to increase the attraction of the plaza and sense of safety at night
- Collaboration with Whatcom Transportation Authority to enhance experience for transit riders (shelter, interpretation)
- Positive project to build the emerging Fountain Business Association
- Adjacent business engagement/expansion opportunity could create a strong visual backdrop and increase activity (murals, outdoor seating, programming, windows/eyes on plaza, etc)
- Creative utilization of utility infrastructure (PSE poll, traffic box, bus shelters) as platforms for information or artwork
- Engagement and interest of NW Surveyors Association (replacement of survey monument at grade and/or represent survey significance in other ways)

#### **THREATS**

- Designing plaza around existing tree of questionable structural integrity may limit use and/or access of space (including transit stop expansion)
- Incorporating all amenities and ideas offered by community/staff may result in a cluttered space and/or low-quality features in order to accommodate limited budget
- Limited budget to incorporate all desired or quality of amenities
- High traffic volume creating a perception of unsafe conditions and noise, limiting public desire to access the space
- Existing infrastructure encouraging “abnormal use” (e.g. sleeping on benches, hiding behind bushes, etc)
- Wind exposure might create unappealing environment for lingering without incorporating additional infrastructure
- Question whether additional hardscape may trigger stormwater requirements, which could encompass much of the project budget

#### **ITEMS OF CONSENSUS FROM 2007 DESIGN CHARETTE (FOR DISCUSSION):**

- Keep the look simple, uncluttered
- Low maintenance
- Keep focus on the fountain
- Cut out much of the aggregate to increase grass/ground cover areas (Could use low ground covers other than grass)
- Include interpretive signage regarding the history of the park
- Use short benches placed strategically for the view



- Put direction & location info on the ground using mosaic or stencils (e.g., neighborhood names, arrows, more distant locations)
- No flower beds
- In general, think of ways to add color to the park such as with mosaic, lighting, colored concrete, and painted benches.
- Fountain concept of natural stone waterfall representing original spring

**Attachment D**  
**Sample Contract**  
AGREEMENT FOR CONSULTANT SERVICES  
**CITY OF BELLINGHAM --**  
**ATTACHMENT A**

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

**V. 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.

**VI. 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

**VII. 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.

#### **VIII. 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.

#### **IX. 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.

**X. 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.

#### **XI. 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.

#### **XII. 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.

### **XIII. 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 act, 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.

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.

- XIV. 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.
- XV. 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.
- XVI. 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.

- XVII. 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.
- XVIII. 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.
- XIX. 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.
- XX. 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:

- XXI. 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.

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

**Departmental Approval:**

\_\_\_\_\_  
\_\_\_\_\_  
*Mayor*

*Department Head*

**Attest:**

**Approved as to Form:**

\_\_\_\_\_  
\_\_\_\_\_  
*Finance Director*

*Office of the City Attorney*

## **Attachment D Design Concept**

### **Procedures and Conditions for RFP, RFQ, SOQ**

- Questions concerning the bid process should be addressed to the following:
  - Purchasing Office  
2221 Pacific Street  
Bellingham, WA 98229  
Phone: 360-778-7750  
Email: [bids@cob.org](mailto:bids@cob.org)
- Bidders are requested to review the Bid Documents carefully, without delay, for defects and questionable or objectionable matter. Questions, objections or comments regarding the Bid Documents or bid process should be made in writing and received by the issuing office no later than seven (7) business days' prior to bid opening so that any necessary addenda may be published and distributed to bidders prior to the bid submission deadline. Any interpretation or correction will be issued, with the City's approval as an Addendum. All communications should be in writing and addressed to the following: City of Bellingham, Purchasing Office, 2221 Pacific Street, Bellingham, Washington 98229 or [bids@cob.org](mailto:bids@cob.org).
- Addendum (Addenda) are written or graphic instructions issued by the City's Purchasing Office prior to the receipt of bids in accordance with these Bid Procedures and Conditions, which interpret, clarify, correct, modify, add, or delete portions of the Bid Documents. All addenda will be posted on the City of Bellingham website at <http://www.ebidexchange.com/bellingham>
- The plan holder's list is the master list the City will use to notify bidders of changes in the bid documents. All changes to Bid Documents will be issued by the Purchasing Office in the form of an addendum. The City will notify planholders by email. The City will make a reasonable effort to notify bidders of changes; however the sole responsibility lies upon the bidder to inquire if a change has been issued prior the bid opening time and date. Please visit the website at <http://www.ebidexchange.com/bellingham> or call the Purchasing Office at 360-778-7750 to verify Addenda prior to submitting a bid.



- RFP's, RFQ's, SOQ's will not be accepted if received at the location later than the date and time set for the opening. All document envelopes/boxes should be clearly marked to show the solicitation number, title, and date of opening. It is the vendor's responsibility to deliver the documents to the proper location by the assigned time. The City accepts no responsibility for misdirected or lost bids or supporting documents prior to the City actually receiving them. A vendor may withdraw its bid at any time prior to the scheduled closing only if done so in writing.
- Results of the opening may be obtained from the purchasing website at <http://www.ebidexchange.com/bellingham>
- Vendors are required to possess a Washington State Business Identification Number (UBI) and a Bellingham City Business Registration Certificate prior to award and will be required to pay business and occupation taxes. For additional information, contact the Finance department, (360)-778-8000.
- The City of Bellingham may accept this proposal within 60 days from date of opening. A purchase order issued within the 60 day period shall constitute acceptance of the proposal.
- This award shall be subject to RCW 39.34 Interlocal Cooperation Act wherein other government agencies may purchase on the City Proposal request, in accordance with the terms and prices stated, over the subsequent time period for which the vendor is willing to honor the solicitation price.
- Vendor's exception to the stated delivery time may cause the offer to be considered non-responsive by the City.
- The vendor shall hold and save the City, its officers, agents and employees, harmless for liability of any nature or kind, including costs and expenses, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, unless such suits or damages arise from negligence on the part of the City or its employees in the performance of their assigned duties. The City shall not be liable for any costs incurred by the vendor in proposal preparation.
- In case of default by the vendor, for whatever reasons, the City of Bellingham may procure the services from other sources and hold the vendor responsible for any excess cost occasioned thereby. In case of default by the vendor on this proposal, the vendor will not be allowed to submit proposals on subsequent proposals for the same project.

- The RFP, RFQ, or SOQ will be incorporated into the City's purchase order and the successful vendor will be bound by the solicitation and the purchase order terms and conditions. Any vendor not complying with the terms of this solicitation and purchase order will be, in addition to any other legal or equitable remedies that may be available to the City.
- Provision for RFPs for Services Contracts regarding Living Wage Ordinance.
  - A. If selected, bidder agrees to fully comply with and be bound by all provisions contained in Bellingham Municipal Code Chapter 14.18, regarding paying a living wage. The provisions of BMC Chapter 14.18 will be incorporated into any contract between the City and Bidder.
  - Bidder shall not discharge, reduce in compensation, or otherwise discriminate against any employee for seeking to assert or enforce any rights under MNC Chapter 14.18 by any lawful means.
  - Bidder shall keep itself informed of the current requirements contained in BMC Chapter 14.18, including, by way of example, the current compensation amounts.
  - Any successful Bidder using a subcontractor will be required to ensure that the subcontractor will comply with BMC Chapter 14.18.
- If the City receives a written protest from a bidder, the City will not award a bid with anyone other than the protesting bidder without first providing at least two (2) full business days' written notice of the City's intent award the bid; provided that the protesting bidder submits notice in writing of its protest no later than two (2) full business days' following the bid opening. Any protest must be made in writing, signed by the protesting bidder or its authorized agent, and filed with the City's Purchasing Manager, 2221 Pacific Street, Bellingham, WA 98229, with a copy to the City Attorney, 210 Lottie Street, Bellingham, WA 98225. The protest shall contain all of the following information:
  - The protestor's name, address, phone number, and email;
  - The bid number and bid project name;
  - A detailed description of the specific factual and legal ground(s) for the protest, including all exhibits referenced by the protestor; and
  - Unless prohibited by law, the City reserves the right to reject all bids as a remedy to a protest or independently of protests. Failure to comply with these procedures shall render a protest untimely or inadequate and, consequently, may result in the City rejecting the protest solely on this basis. Any decision made by the City regarding the bid award, contract execution or bid rejection shall be final, subject to such judicial review as permitted under Washington law upon timely filing in the

Superior Court of Whatcom County, Washington. This venue clause shall modify any other provision in these Bid Documents to the extent there is an inconsistency.