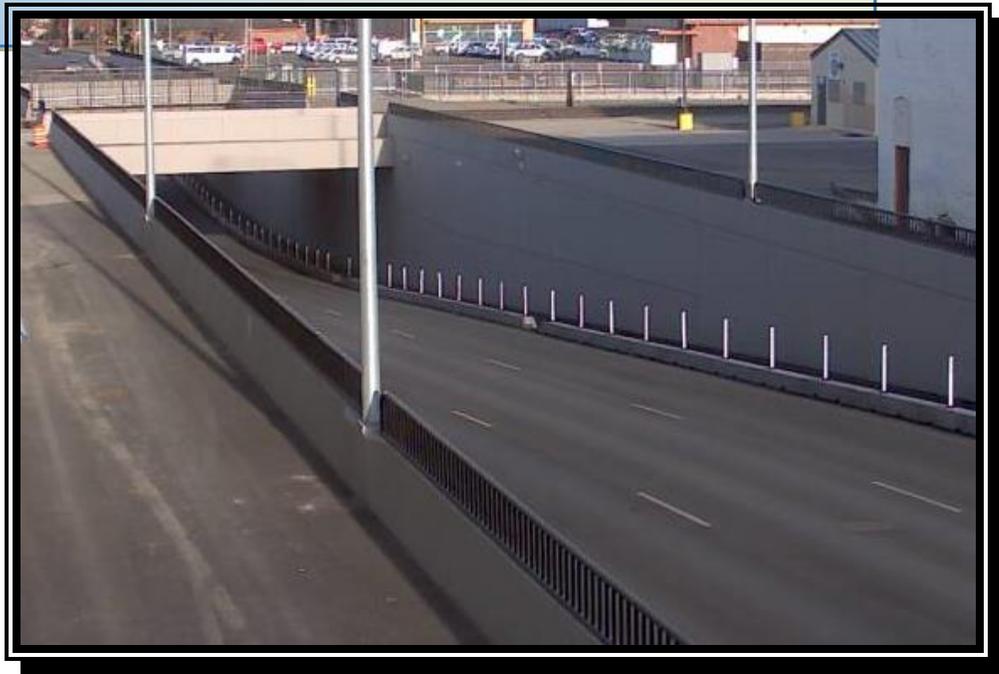


POLICY AND PROCEDURE FOR:

**Contracting for
Architects and Engineers
at the City of Yakima**



Effective October 21, 2019

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Why: The City Manager desires a uniform process at the City of Yakima for contracting Architect and Engineering (A/E) Services that is in compliance with State and Federal laws. This manual may be revised as needed by the City Manager.

Who: This policy applies to all divisions. Henceforth, no A/E contracts shall go before the Yakima City Council for approval unless they have followed this policy (ADM 2-800).

Exclusions: **Non-**A/E professional service, personal service, or purchased services are not included in this policy.

How is A/E different? The main difference between contracting for A/E service and other services is that you cannot ask for fees or costs in the request for Statement of Qualifications (SOQ). This is State Law. You must choose an A/E based on qualifications first and then negotiate cost with the most qualified firm. This is called “Qualifications Based Selection”, or (QBS).

A/E Using Local Funds: All local governments of the State of Washington must follow Revised Code of Washington (RCW) 39.80 for procuring A/E professional services. See “*The Statutes*” section for Chapter 39.80, RCW with the exception of procuring A/E services with federal funds.

A/E Using Federal Funds: Procurement of A/E services with federal funds is governed by the Brooks Act (Public Law 92-582), (See 40 U.S.C. 1101-1104 and 49 U.S.C. 325 (b)), as described in the [Washington State LAG manual](#) which can viewed by clicking the link or at: <http://www.wsdot.wa.gov/localprograms/LAG/>. Other grant funded A/E shall be governed by the requirements as set forth in the grant.

A&E Professional Services

Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters 18.08 (Architects), 18.43 (Engineers and Land Surveyors), or 18.96 (Landscape Architects) RCW. RCW 39.80.020(5).

- Services are procured using the qualifications based selection (QBS) requirements in Chapter 39.80 RCW.
- These services may reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4).
- Licenses or certification by State agencies are required.

Examples include:

- Architectural blueprints.
- Road design.
- Sewer and water system design.

A&E Consultant

An A&E consultant is an independent individual or firm contracting with an agency to perform a service, as described above.

Emergency

Set of unforeseen circumstances beyond the control of the agency that either: present a real, immediate threat to the proper performance of essential functions; or may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. RCW 39.04.0280

Levels of Competitive Solicitation

Specific to the City of Yakima, there are differing levels of effort and procedure in selecting a service provider based on the estimated contract price, complexity and type of project or work to be accomplished. Levels of competition for the purposes of this publication are TYPE I, II and III. Amounts of the A/E fee levels (not the construction costs) are:

TYPE I Competition – \$1 Million and above

TYPE II Competition – Between \$50,000 and \$999,999

TYPE III Competition – Between \$0 and \$49,999

Public Works

Public work means all construction, reconstruction, maintenance (other than ordinary maintenance), or repair, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. RCW 39.04.010(4).

Qualifications-Based-Selection (QBS)

QBS is a competitive procurement process in which consulting firms reply to the city's Request for Qualifications (RFQ) and submit their Statement of Qualifications (SOQ), which is a non-cost proposal, to an agency. The distinguishing feature of QBS over other types of consultant selection is that price is not used as an initial selection criterion. The agency assesses the expertise of competing firms and selects the most highly qualified firm, then negotiates the final project scope and associated fee. If the agency and most highly qualified firm cannot reach an agreement on project scope, schedule, and budget, the agency then negotiates with the next most highly qualified firm. Once you have moved on to the next firm, you cannot go back to the first firm.

Request for Proposals (RFP)

Do not use an RFP to request SOQ's. Use a Request for Qualifications (RFQ). RFP's take costs into consideration, which is not allowed in the RFQ process.

Request for Qualifications (RFQ)

Used to solicit SOQ's from A&E firms. RFQ's must be awarded by qualifications only, using a Qualifications Based Selection (QBS).

Services Roster

A categorized database of consultants and/or other service providers desiring to provide services to an agency that is established in response to notice or advertisement and that contains statements of qualification (SOQs) and other information that an agency can use to evaluate a service provider. The City of Yakima uses MRSC's Roster. www.mrscrosters.org

Statements of Qualification (SOQs)

What is received from firm(s) when responding to a Request for Qualifications (RFQs). The responding firm sends the City their Statement of Qualifications in hopes they will be chosen for professional services.

Chapter 39.80 RCW

CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

39.80.010

Legislative declaration.

The legislature hereby establishes a state policy, to the extent provided in this chapter that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

[1981 c 61 § 1.]

Notes: Effective date -- 1981 c 61: "This act shall take effect on January 1, 1982." [1981 c 61 § 9.]

39.80.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, transportation districts, and metropolitan municipal corporations organized under chapter [35.58](#) RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsections (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters [18.08](#), [18.43](#), or [18.96](#) RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services.

[1999 c 153 § 55; 1981 c 61 § 2.]

Notes: Part headings not law -- 1999 c 153: See note following RCW [57.04.050](#).

Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.030

Agency's requirement for professional services — Advance publication.

Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each occasion when professional services provided by a consultant are

required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services.

[1981 c 61 § 3.]

Notes: Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.040

Procurement of architectural and engineering services — Submission of statement of qualifications and performance data — Participation by minority and women-owned firms and veteran-owned firms.

In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the professional communities involved.

[2010 c 5 § 10; 1981 c 61 § 4.]

Notes: Purpose -- Construction -- 2010 c 5: See notes following RCW [43.60A.010](#).

Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.050

Procurement of architectural and engineering services — Contract negotiations.

(1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW

[39.80.040](#) and continue in accordance with this section until an agreement is reached or the process is terminated.

[1981 c 61 § 5.]

Notes: Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.060

Procurement of architectural and engineering services — Exception for emergency work.

(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

[1981 c 61 § 6.]

Notes: Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.070

Contracts, modifications reported to the office of financial management.

Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes.

[1993 c 433 § 9.]

39.80.900

Savings.

Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982.

[1981 c 61 § 7.]

Notes: Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

39.80.910

Severability — 1981 c 61.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1981 c 61 § 8.]

Notes: Effective date -- 1981 c 61: See note following RCW [39.80.010](#).

4.

Identify Fee Level of Competition Summary

\$1 Million - Requires *TYPE I* Competition – A structured RFQ process soliciting SOQ's. An advertisement (web and Yakima Herald Republic) is required. **Do not use www.mrscrosters.org for TYPE I Competition.**

\$50,000 to \$999,999 - Requires *TYPE II* Competition - A minimum of three firms are selected from the City's services roster (currently www.mrscrosters.org) with no additional advertisement.

\$49,999 and under - Requires *TYPE III* Competition – Solicit qualifications from 1 to 3 firms, or select the most qualified firm directly from the services roster.

TYPE I Competition Over \$1 Million

A/E's over \$1 Million require a structured RFQ process and advertisement. **Do not** use www.mrscrosters.org for TYPE I Competition of A/E contracts estimated to be over \$1 Million.

Action by:

Action:

Division Manager

- 1. **Determines** the need to hire A/E.
- 2. **Obtains** estimate on A/E cost.
- 3. **Verifies** budget availability.
- 4. **Understands** the requirements of the funding source.
- 5. **Confirms** project does not include state or federal funding, requiring the use of federal or WSDOT Local Agency Guidelines (LAG).

5a. The [LAG Manual](http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/LAGManual.pdf) provides policies and standards for local agencies to follow when using Federal Highway Administration (FHWA) funds for transportation projects and can be viewed at:
<http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/LAGManual.pdf>

5b. Procurement of A/E services with federal funds is governed by the Brooks Act (Public Law 92-582), (See [40 U.S.C. 1101-1104](#) and [49 U.S.C. 325 \(b\)](#)) as described in the LAG Manual. Other grant funded A/E shall be governed by the requirements as set forth in the grant.

- 6. **Contacts** the City Engineer and Purchasing Manager to apprise them of the project.

Purchasing

- 7. **Assigns** RFQ tracking number.

Division Manager

- 8. **Writes** up scope of work and inserts into A/E Request for Qualifications (RFQ) template ([ATTACHMENT A](#)).

Division Manager

- 10. **Places** advertisement in Yakima Herald-Republic Newspaper (the city's official newspaper), the city's webpage and the Daily Journal of Commerce.

10a. Division may also directly solicit firms in addition to the advertisement.

12. **Receives** SOQ responses (date and time stamped) and **holds** until the due date.
13. **Reviews** all SOQ responses and **short-lists** a minimum of 3 firms, using qualifications as described in the RFQ. **Records** rationalization for each firm that did or did not make the short-list.
- 13a. If only one SOQ was received and they are qualified, they may be selected, or the Division Manager may choose to re-advertise.
14. **Contacts** short-listed firms via email **inviting** them to interviews on a certain date (See [ATTACHMENT B](#) for sample).
- 14a. Face-to-Face interviews are urged, however, because of unique situations, the Division Manager may opt to conduct internet (e.g. SKYPE) or phone interviews.
15. **Writes** thank you letters to Firms who DID NOT make the short-list (see [ATTACHMENT C](#) for sample).
15. **Notifies** the firms that DID make the short-list and tells them they will be re-contacted shortly for an interview.
16. **Chooses** a cross-selection of members to serve as the Selection Committee (SC). The SC shall consist of 3 to 5 members and are chosen by the **Division Manager**.
- 16a. The **City Engineer** has the ability to modify the SC as they see fit.
17. **Reserves** room and coordinates availability of SC.
18. **Routes** packets to all persons on the SC, containing:
- A cover memo (see [ATTACHMENT D](#)) asking them to review the SOQ's reminding them of the date/time of the SC meeting
 - One copy of each SOQ received
 - Confidentiality/Conflict of Interest Member Agreement (see [ATTACHMENT E](#))
 - Blank Score Sheet utilizing evaluation criteria (see [ATTACHMENT F](#))
19. **Performs** reference checks using script (see [ATTACHMENT G](#)) and **writes** a summary of results for dissemination to the SC on the day of the meeting.

Selection Committee 22. **Scores** the Interviews and **recommends** (via sample in [ATTACHMENT H](#)) “Intent to Negotiate” with the most highly qualified firm.

Division Manager 23. **Routes** to the City Manager for approval, utilizing the City manager Transmittal Form.

23. **Notifies** the successful respondent and using the standard A/E contract template (see [ATTACHMENT I](#)), negotiates the final project scope and associated fee.

23a. If the most highly qualified firm cannot reach an agreement on project scope, schedule, and budget, negotiate with the next most highly qualified firm, according to who scored the next highest score (you may **not** go back to the first firm interviewed).

24. **Obtains** Legal review of final contract.

25. **Prepares and uploads** resolution/agreement to NOVUS for Council approval.

26. **Contacts** awarded firm to request Certificate of Insurance (COI), per limits set forth in [ATTACHMENT J](#)).

26a. High risk or unusual work may require different limits or types of insurance. Contact the City’s contracted Insurance Broker to describe the project and obtain recommendations of insurance limits/types needed at:

<p style="text-align: center;">PayneWest Insurance Jeff Widdows, Commercial Acct Exec 509-853-4222 jwiddows@paynewest.com</p>

27. **Maintains** the original COI with the file and sends a scanned copy to Purchasing for tracking.

28. If Change Order is necessary, **initiates** change order process and follows process outlined in next Section VI. See ADM 2-200 for change order authority.

TYPE II Competition Between \$50,000 and \$999,999

A/E's between \$50,000 and \$999,999 require solicitation to a minimum of three firms selected from our services roster (currently www.mrscrosters.org) with no additional advertisement.

Action by:

Action:

Division Manager

- 1. **Determines** the need to hire A/E.
- 2. **Obtains** estimate on A/E cost.
- 3. **Verifies** budget availability.
- 4. **Understands** the requirements of the funding source.
- 5. **Confirms** project does not include state or federal funding, requiring the use of federal or WSDOT Local Agency Guidelines (LAG).

5a. The LAG Manual provides policies and standards for local agencies to follow when using Federal Highway Administration (FHWA) funds for transportation projects and can be viewed at:

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/LAGManual.pdf>

5b. Procurement of A/E services with federal funds is governed by the Brooks Act (Public Law 92-582), (See 40 U.S.C. 1101-1104 and 49 U.S.C. 325 (b) as described in the LAG Manual. Other grant funded A/E shall be governed by the requirements as set forth in the grant.

- 6. **Contacts** City Engineer and Purchasing Manager to apprise them of the project.

Purchasing

- 7. **Assigns** RFQ tracking number.

Division Manager

- 8. **Writes** up scope of work and inserts into A/E Request for Qualifications (RFQ) (**ATTACHMENT A**).

Division Manager

- 10. **Solicits** directly to a minimum of three (3) firms from MRSC Rosters.



- 11. **Logs** into www.mrscrosters.org. Contact Purchasing for Account Login and Password.

- 12. **Selects** “Consultant Category Search”, and chooses the category you are interested in. Pick a minimum of 3 qualified consultants off the list and solicit with preapproved RFQ. **Download** the list to EXCEL and save in file.
- 13. **Receives** RFQ responses (date and time stamped) and **holds** until the due date. Responses shall be date and time stamped as they are received.
- 14. **Reviews** all RFQ responses and **short-lists** a minimum of 3 firms, using qualifications as described in the RFQ. **Records** for the file, rationalization for each firm that did or did not make the short-list.

14a. If only one SOQ was received and they are qualified, they may be selected, or the division manager may choose to re-advertise.
- 15. **Contacts** short-listed firms via email **inviting** them to interviews on a certain date (See [ATTACHMENT B](#) for sample).

15a. Face-to-Face interviews are urged, however, because of unique situations, the Division Manager may opt to conduct internet (e.g. SKYPE) or phone interviews.
- 19. **Writes** thank you letters to Firms who didn’t make the short-list (see [ATTACHMENT C](#) for sample).
- 15. **Notifies** the firms that DID make the short-list and tells them they will be re-contacted shortly for an interview.
- 20. **Chooses** a cross-selection of members to serve as the Selection Committee (SC). The SC shall consist of 3 to 5 members are chosen by the **Division Manager**.

20a. The **City Engineer** has the ability to modify the SC as they see fit.
- 21. **Reserves** room and coordinates availability of SC.
- 22. **Routes** packets to all persons on the SC, containing:
 - A cover memo (see [ATTACHMENT D](#)) asking them to review the RFQ’s reminding them of the date/time of the SC meeting
 - One copy of each SOQ received
 - Confidentiality/Conflict of Interest Member Agreement (see [ATTACHMENT E](#))
 - Blank Score Sheet utilizing evaluation criteria (see [ATTACHMENT F](#))

- 23. **Performs** reference checks using script (see [ATTACHMENT G](#)) and **writes** a summary of results for dissemination to the SC on the day of the meeting.

Selection Committee 26. **Scores** the Interviews and **recommends** (via sample in [ATTACHMENT H](#)) award to the most highly qualified firm.

Division Manager 27. **Routes** the Selection Committee’s Recommendation of Award to the City Manager for approval.

Notifies the successful respondent of the impending award, and using the standard A/E contract template (see [ATTACHMENT H](#)), negotiates the final project scope and associated fee.

27a. If the most highly qualified firm cannot reach an agreement on project scope, schedule, and budget, negotiate with the next most highly qualified firm, according to who scored the next highest score (you may **not** go back to the first firm interviewed).

- 28. **Obtains** Legal review of final contract.
- 29. **Prepares and uploads** resolution/agreement to NOVUS for Council approval.
- 30. **Contacts** awarded firm to request Certificate of Insurance (COI), per limits set forth in [ATTACHMENT I](#).

30a. High risk or unusual work may require different limits or types of insurance. Contact the City’s contracted Insurance Broker to describe the project and obtain recommendations of insurance limits/types needed at:

<p style="text-align: center;">PayneWest Insurance Jeff Widdows, Commercial Acct Exec 509-853-4222 jwiddows@paynewest.com</p>

- 31. **Maintains** the original COI with the file and sends a scanned copy to Purchasing for tracking.
- 32. If Change Order is necessary, **follow steps outlined in Section VI**.

TYPE III Competition Under \$49,999

A/E's Under– \$49,999 - Solicit quotes from 1 to 3 firms from our services roster (currently www.mrscrosters.org) with no additional advertisement.

Action by:

Action:

Division Manager

- 1. **Determines** the need to hire A/E.
- 2. **Obtains** estimate on A/E cost.
- 3. **Verifies** budget availability.
- 4. **Understands** the requirements of the funding source.
- 5. **Confirms** project does not include state or federal funding, requiring the use of federal or WSDOT Local Agency Guidelines (LAG).

5a. The LAG Manual provides policies and standards for local agencies to follow when using Federal Highway Administration (FHWA) funds for transportation projects and can be viewed at:

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/LAGManual.pdf>

5b. Procurement of A/E services with federal funds is governed by the Brooks Act (Public Law 92-582), (See 40 U.S.C. 1101-1104 and 49 U.S.C. 325 (b) as described in the LAG Manual. Other grant funded A/E shall be governed by the requirements as set forth in the grant.

- 6. **Contacts** City Engineer and Purchasing Manager to apprise them of the project.

Purchasing

- 7. **Assigns** RFQ tracking number.

Division Manager

- 8. **Writes** up scope of work and inserts into RFQ template (**ATTACHMENT A**), then returns to Purchasing.
- 10. **Solicits** directly to a minimum of one (1) to three (3) firm(s) from **MRSC Rosters (they must be on the Roster no matter the dollar amount)**.

- 11. **Logs** into www.mrscrosters.org. Contact Purchasing for Account Login and Password. Even if you are not seeking competition, the firm MUST be on MRSC's Roster.

- 12. **Selects** "Consultant Category Search", and chooses the category you are interested in. Pick one (1) firm (if no competition is desired), to three (3) (if competition desired) qualified consultants off the list and solicit with preapproved RFQ. Be sure to download list to EXCEL and keep for file.

12a. If only one firm solicited, you may begin contract negotiations immediately.

- 13. **Receives** RFQ response(s) and holds until the due date. Responses shall be date and time stamped as they are received.

- 14. **Records** rationalization for each firm that did or did not make the short-list.

- 15. If more than one firm was short-listed, **Contacts** all firms via email **inviting** them to interviews on a certain date (See [ATTACHMENT B](#) for sample).

15a. Face-to-Face interviews are preferred, but phone or Skype interviews are also acceptable.

- 16. **Writes** thank you letters to Firms who didn't make the short-list (see [ATTACHMENT C](#) for sample).

- 20. **Performs** reference checks using script (see [ATTACHMENT G](#)) and **writes** a summary of results for the file.

- 23. **Scores** the Interviews and **recommends** (via sample in [ATTACHMENT H](#)) "Intent to Negotiate" with the most highly qualified firm and routes to the City Manager

- 24. **Notifies** the successful respondent and using the standard A/E contract template (see [ATTACHMENT H](#)), negotiates the final project scope and associated fee.

24a. If the most highly qualified firm cannot reach an agreement on project scope, schedule, and budget, negotiate with the next most

highly qualified firm, according to who scored the next highest score (you may **not** go back to the first firm interviewed).

- 25. **Obtains** Legal review of final contract.
- 26. **Obtains** City Manager approval. Route with a City Manager Transmittal Form.
- 27. **Contacts** awarded firm to request Certificate of Insurance (COI), per limits set forth in [ATTACHMENT I](#)).

27a. High risk or unusual work may require different limits or types of insurance. Contact the City's contracted Insurance Broker to describe the project and obtain recommendations of insurance limits/types needed at:

<p style="text-align: center;">PayneWest Insurance Jeff Widdows, Commercial Acct Exec 509-853-4222 jwiddows@paynewest.com</p>

- 28. **Maintains** the original COI with the file and sends a scanned copy to Purchasing for tracking.
- 29. If Change Order is necessary, **follow steps outlined in Section VI**.

6.

Change Orders (applies to all limits)

What is a Change Order? A Change order is a modification of the original contract that becomes part of the overall contract. Change orders may increase or decrease the sum of the original contract.

Do NOT do a Change Order when: The change you are trying to make is out of scope, not described in detail as part of a “multi-phase project”, or the project is excessively large. **DO A NEW CONTRACT INSTEAD.** Change orders to existing A/E contracts will not be approved unless they follow these guidelines.

Who Can Sign A Change Order?: Per Yakima Administrative Code (ADM) 2-200, change orders to Professional Service Contracts (after funds are budgeted and verified) shall be approved as follows:

- **Under \$10,000** cumulative limit, **Department Director** approves and **City Manager** notified.
- **Over \$10,000** cumulative limit, **City Manager** approves.

WSDOT: [WSDOT change order guidelines](#) must be used when using FHWA funding. Policy can be viewed at:

<http://www.wsdot.wa.gov/NR/rdonlyres/7C35B04E-F736-47BA-891E-0B9F7021FDF3/0/ChangeOrderProcessGuide.pdf>

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ATTACHMENT A

A/E Request for Qualifications (RFQ) Template

[DATE]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Dear [NAME]:

The City of Yakima seeks to hire an architectural firm with expertise in [ENTER SUMMARY DESCRIPTION OF PROJECT].

It is anticipated that this work will begin on [ENTER DATE] and end on [ENTER DATE].

Your firm has been selected from the MRSC Roster to possibly complete this work for the City.

Project Description:

Major elements of work include, but are not limited to:

- •
•
•

The chosen architect/engineer will demonstrate they have personnel available to perform this work that have significant experience with similar projects.

Submittal Requirements:

If you are interested in performing this work, please submit four copies of your Statement of Qualifications by 3:00 PM, [ENTER DATE]. Please limit the information requested below to a maximum of twenty-five single sided pages including the names of the Principle in Charge and Project Manager for this project.

Submittals will be evaluated and ranked based on the following criteria:

- 1. Key personnel qualifications and relevant experience 25 points
2. Available staff to perform in timely fashion 20 points
3. Past performance on similar tasks / references 25 points
4. Understanding and approach 30 points

In order to be considered for this work, please submit four copies your Statement of Qualifications package by [ENTER TIME AND DATE] to:

[NAME/TITLE]
City of Yakima [DEPARTMENT]
[ADDRESS]
[ADDRESS]

If you have any questions, please contact me at (406) XXX-XXXX.

Sincerely,

[NAME]
[TITLE]
[ADDRESS]

Consultant Interview Invitation

SAMPLE

Date

(addressee)

Dear _____,

The City of Yakima seeks to hire a consulting firm to help with (enter same description from RFQ below).

Based on the Statement of Qualifications that you submitted on (date)_____, your firm has been selected to interview for providing _____ services for the City of Yakima’s _____project. We will be holding interviews on (date)_____.

The interview schedule is as follows:

- _____ – 1:00 pm
- _____ – 2:00 pm
- _____ – 3:00 pm

Interviews will be limited to 30 minutes, with 15 minutes for questions.

If you have any questions, please call me at (509) _____.

We look forward to meeting you.

Sincerely,
(name)
(title)

Thank You Letter Unsuccessful Firms

SAMPLE

(date)

(addressee)

RE: (Project name)

Dear _____,

This letter is your official notification that the Selection Committee has selected award of the above RFQ to _____.

No further consideration will be given to your SOQ, pending successful contract negotiations with the successful vendor.

The City of Yakima and the Selection Committee wish to extend their sincere appreciation to _____ for your efforts in responding to our RFQ.

Sincerely,

(name)

(title)

Cover Memo to Selection Committee

SAMPLE
(date)

Thank you for serving on the analysis committee to help choose a consultant for

Enclosed you will find:

- The original RFQ that went out for solicitation.
- Copies of the responses received.
- One score sheet for each response.
- Conflict of Interest/Confidentiality Statement

- 1) Familiarize yourself with the RFQ so you can see what was asked of the consultants.
- 2) Read and sign the Conflict of Interest/Confidentiality Statement. You can bring it with you to the meeting. They become a permanent part of the selection file.
- 3) Review and become familiar with the responses. Write down any questions that you may have for the consultants, or for the analysis committee. We may contact them by phone or Skype at the first meeting, or ask them to come in for an interview at a later date.
- 4) The firms SOQ's and Interviews will be scored separately and the two scores will be added together. The score sheets will become a permanent part of the RFQ file.

If you have any questions, please feel free to call me at _____.

See you on (date and time). at (enter location)

Thank you,

(name)

(title)

Confidentiality/Conflict of Interest Member Agreement

City of Yakima
SELECTION COMMITTEE MEMBER AGREEMENT

RFQ No. _____

In consideration of being allowed to serve on the Selection Committee described below, I,
_____, **hereby agree that:**

(Printed Name)

1. I am a member of the Selection Committee evaluating proposals submitted to the City of Yakima in response to the above listed RFQ.
2. I will not communicate with others outside of the Evaluation Committee on the nature or content of the written proposals, product demonstrations, interviews, the evaluation proceedings, the deliberations of the Evaluation Committee, or individual opinions about the proposers or the project. Proposals and the identity of the proposers will be held in confidence through the evaluation processes.
3. I understand and agree that I do not have a conflict of interest of a financial, relational, or other nature with any of the firms or key personnel of any of the firms I will be evaluating, and that there is no perception or appearance of such a conflict of interest that could arise. I further agree that no member of my immediate family has any such conflict of interest. "Immediate family" means a spouse or domestic partner, child, child of a spouse or domestic partner, sibling, sibling of a domestic partner, brother-in-law, sister-in-law, parent, parent of a spouse or domestic partner, a person for whom I am a legal guardian, or a person claimed as a dependent on my most recently filed federal income tax return.
4. If I have any reason to contact any proposer participating in this solicitation, even if the matter is not directly or indirectly related to this project, I will immediately divulge the nature and reason of the contact to the Purchasing Manager.
5. I have a professional interest in ensuring the results of the Committee's evaluation are legally supportable and defensible.
6. I have a professional interest in ensuring the final recommendation of the Committee can and will lead to the selection of a vendor who can and will provide services with will be acceptable and in the best interest of the City of Yakima and Yakima County.
7. I am not employed by, nor do I have an arrangement for future employment with, any organization under consideration, nor will I solicit or accept gratuities, favors, or anything of monetary value from any organization associated with this selection.

I disclose the following information: _____

Signature: _____

Date: _____

ATTACHMENT F

Score Sheet

Name of Evaluator: _____

Name of Firm: _____

Evaluation Criteria (May be customized for each selection):

A maximum score of 100 points will be used to evaluate Proposals. Each of the following elements shall have the stated maximum point value:

	<i>Qualification and Experience</i>	<i>Maximum Points Allowed</i>	<i>Points Given</i>
(1)	Management Capacity	0-25	
(2)	Experience and Skill	0-30	
(3)	Financial Capacity	0-30	
(4)	References	0-15	
	TOTAL	100	

ATTACHMENT G

References Script

SAMPLE

- 1) Describe the work _____ performed for you?

- 2) Who were the main people in charge of the project and how did they perform?

- 3) Was the project done on time and within budget?

- 4) If you could change anything about the project, what would it be?

- 5) Would you hire them again?

Selection Committee Intent to Negotiate

[ADDRESS TO CITY MANAGER],

On (date), the City solicited RFQ No. _____ to hire an A/E firm to conduct (name type of

(# of) proposals were received on the due date of (date), 2020 for the above project from the following firms:

(list firm name and location)

The analysis committee was formed and given materials and instructions on how to conduct the analysis and score the proposals on (date). Committee Members:

(List Committee Members)

The proposals were checked for responsiveness by (enter name) and deemed to be responsive. Respondents were invited for interviews and presentations on (date).

The proposals were scored for the content of their SOQ's and the interviews, utilizing the following scoring matrix, as listed in the RFP:

	<i>Qualification and Experience</i>	<i>Possible Points</i>
(1)	Management Capacity	0-25

(2)	Experience and Skill	0-30
(3)	Financial Capacity	0-30
(4)	References	0-15
	TOTAL	100

Out of ____ possible points (200 total points for each evaluator), the firms scored as followed:

(Enter firm Name) _____ (points).

(Enter firm Name) _____ (points).

(Enter firm Name) _____ (points).

(Enter firm name) was the unanimous winner.

The committee recommends that we proceed to contract negotiations with (firm name).

Sincerely,

(Name)

(Title)



APPROVED:

, City Manager

Date

Professional Services Agreement Template

AGREEMENT BETWEEN

CITY OF YAKIMA, WASHINGTON
AND _____ FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on this ____ day of _____, 20XX, by and between the City of Yakima, Washington, a municipal corporation with its principal office at 129 North Second Street, Yakima, WA 98901, (hereinafter referred to as "CITY"), and _____ with its principal office at _____, (hereinafter referred to as "ENGINEER"); said corporation being licensed and registered to do business in the State of Washington, and will provide _____ services under this Agreement for _____ on behalf of the City of Yakima, Project No. _____, herein referred to as the "PROJECT."

WITNESSETH:

RECITALS

WHEREAS, CITY desires to retain the ENGINEER to provide engineering services for design and construction of the PROJECT, as described in this Agreement and subsequent Amendments thereto; and

WHEREAS, ENGINEER represents that it has available and offers to provide personnel with knowledge and experience necessary to satisfactorily accomplish the work within the required time and that it has no conflicts of interest prohibited by law from entering into this Agreement;

NOW, THEREFORE, CITY and ENGINEER agree as follows:

SECTION 1 INCORPORATION OF RECITALS

1.1 The above recitals are incorporated into these operative provisions of the Agreement.

SECTION 2 SCOPE OF SERVICES

2.0.1 ENGINEER agrees to perform those services described hereafter. Unless modified in writing by both parties, duties of ENGINEER shall not be construed to exceed those services specifically set forth herein.

2.0.2 ENGINEER shall use its best efforts to maintain continuity in personnel and shall assign, _____ as Principal-in-Charge throughout the term of this Agreement unless other personnel are approved by the CITY.

2.1 Basic Services: ENGINEER agrees to perform those tasks described in Exhibit A, entitled "_____" (WORK) which is attached hereto and made a part of this Agreement as if fully set forth herein.

- 2.2 Additional Services: CITY and ENGINEER agree that not all WORK to be performed by ENGINEER can be defined in detail at the time this Agreement is executed, and that additional WORK related to the Project and not covered in Exhibit A may be needed during performance of this Agreement. CITY may, at any time, by written order, direct the ENGINEER to revise portions of the PROJECT WORK previously completed in a satisfactory manner, delete portions of the PROJECT, or request that the ENGINEER perform additional WORK beyond the scope of the PROJECT WORK. Such changes hereinafter shall be referred to as "Additional Services."
- 2.2.1 If such Additional Services cause an increase or decrease in the ENGINEER'S cost of, or time required for, performance of any services under this Agreement, a contract price and/or completion time adjustment pursuant to this Agreement shall be made and this Agreement shall be modified in writing and accepted by the parties hereto.
- 2.2.2 Compensation for each such request for Additional Services shall be negotiated by the CITY and the ENGINEER according to the provisions set forth in Exhibit B, attached hereto and incorporated herein by this reference, and if so authorized, shall be considered part of the PROJECT WORK. The ENGINEER shall not perform any Additional Services until so authorized by CITY and agreed to by the ENGINEER in writing.
- 2.3 The ENGINEER must assert any claim for adjustment in writing within thirty (30) days from the date of the ENGINEER's receipt of the written notification of change.

SECTION 3 CITY'S RESPONSIBILITIES

- 3.1 **CITY-FURNISHED DATA**: The CITY will provide to the ENGINEER all technical data in the CITY'S possession relating to the ENGINEER'S services on the PROJECT including information on any pre-existing conditions known to the CITY that constitute hazardous waste contamination on the PROJECT site as determined by an authorized regulatory agency.
- 3.2 **ACCESS TO FACILITIES AND PROPERTY**: The CITY will make its facilities reasonably accessible to ENGINEER as required for ENGINEER'S performance of its services and will provide labor and safety equipment as reasonably required by ENGINEER for such access.
- 3.3 **TIMELY REVIEW**: The CITY will examine the ENGINEER'S studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner. Such examinations and decisions, however, shall not relieve the ENGINEER of any contractual obligations nor of its duty to render professional services meeting the standards of care applicable to its profession.
- 3.4 CITY shall appoint a CITY'S Representative with respect to WORK to be performed under this Agreement. CITY'S Representative shall have complete authority to transmit instructions and receive information. ENGINEER shall be entitled to reasonably rely on such instructions made by the CITY'S Representative unless otherwise directed in writing by the CITY, but ENGINEER shall be responsible for bringing to the attention of the CITY'S Representative any instructions which the ENGINEER believes are inadequate, incomplete, or inaccurate based upon the ENGINEER'S knowledge.
- 3.5 Any documents, services, and reports provided by the CITY to the ENGINEER are available solely as additional information to the ENGINEER and will not relieve the ENGINEER of its professional duties and

obligations under this Agreement or at law. The ENGINEER shall be entitled to reasonably rely upon the accuracy and the completeness of such documents, services and reports, but shall be responsible for exercising customary professional care in using and reviewing such documents, services, and reports and drawing conclusions from them.

SECTION 4 AUTHORIZATION, PROGRESS, AND COMPLETION

4.1 In signing this Agreement, CITY grants ENGINEER specific authorization to proceed with WORK described in Exhibit A. The time for completion is defined in Exhibit A, or as amended.

SECTION 5 COMPENSATION

5.1 COMPENSATION ON A TIME SPENT BASIS AT SPECIFIC HOURLY RATES: For the services described in Exhibit A, compensation shall be according to Exhibit C - Schedule of Specific Hourly Rates, attached hereto and incorporated herein by this reference, on a time spent basis plus reimbursement for direct non-salary expenses.

5.1.1 DIRECT NON-SALARY EXPENSES: Direct Non-Salary Expenses are those costs incurred on or directly for the PROJECT including, but not limited to, necessary transportation costs, including current rates for ENGINEER'S vehicles; meals and lodging; laboratory tests and analyses; printing, binding and reproduction charges; all costs associated with other outside nonprofessional services and facilities; special CITY-requested and PROJECT-related insurance and performance warranty costs; and other similar costs. Reimbursement for Direct Non-Salary Expenses will be on the basis of actual charges plus a reasonable markup, not to exceed ten percent (10%), and on the basis of current rates when furnished by ENGINEER. Estimated Direct Non-Salary Expenses are shown in Exhibit B.

5.1.1.1 Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by employees of the ENGINEER and each of the Subconsultants in connection with PROJECT WORK; provided, as follows:

- ◆ That a maximum of U.S. INTERNAL REVENUE SERVICE allowed cents per mile will be paid for the operation, maintenance, and depreciation costs of company or individually owned vehicles for that portion of time they are used for PROJECT WORK. ENGINEER, whenever possible, will use the least expensive form of ground transportation.
- ◆ That reimbursement for meals inclusive of tips shall not exceed a maximum of forty dollars (\$40) per day per person. This rate may be adjusted on a yearly basis.
- ◆ That accommodation shall be at a reasonably priced hotel/motel.
- ◆ That air travel shall be by coach class, and shall be used only when absolutely necessary.

5.1.2 Telephone charges, computer charges, in-house reproduction charges, first class postage, and FAX charges are not included in the direct expense costs, but are considered included in the Schedule of Specific Hourly Billing Rates.

5.1.3 Professional Subconsultants. Professional Subconsultants are those costs for engineering, architecture, geotechnical services and similar professional services approved by the CITY. Reimbursement for Professional Subconsultants will be on the basis of actual costs billed plus a

reasonable markup, not to exceed ten percent (10%) for services provided to the CITY through this Agreement. Estimated Subconsultant costs are shown in Exhibit B.

- 5.2 Unless specifically authorized in writing by the CITY, the total budgetary amount for this PROJECT shall not exceed _____ Dollars (\$_____). The ENGINEER shall make all reasonable efforts to complete the WORK within the budget and will keep CITY informed of progress toward that end so that the budget or WORK effort can be adjusted if found necessary. The ENGINEER is not obligated to incur costs beyond the indicated budget, as may be adjusted, nor is the CITY obligated to pay the ENGINEER beyond these limits. When any budget has been increased, the ENGINEER'S excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase, and provided that the City was informed in writing at the time such costs were incurred.
- 5.3 The ENGINEER shall submit to the City's Representative an invoice each month for payment for PROJECT services completed through the accounting cut-off day of the previous month. Such invoices shall be for PROJECT services and WORK performed and costs incurred prior to the date of the invoice and not covered by previously submitted invoices. The ENGINEER shall submit with each invoice a summary of time expended on the PROJECT for the current billing period, copies of subconsultant invoices, and any other supporting materials and details determined necessary by the City to substantiate the costs incurred. CITY will use its best efforts to pay such invoices within thirty (30) days of receipt and upon approval of the WORK done and amount billed. CITY will notify the ENGINEER promptly if any problems are noted with the invoice. CITY may question any item in an invoice, noting to ENGINEER the questionable item(s) and withholding payment for such item(s). The ENGINEER may resubmit such item(s) in a subsequent invoice together with additional supporting information requested.
- 5.4 If payment is not made within sixty (60) days following receipt of approved invoices, interest on the unpaid balance shall accrue beginning with the sixty-first (61st) day at the rate of 1.0% per month or the maximum interest rate permitted by law, whichever is less; provided, however, that no interest shall accrue pursuant to Chapter 39.76 RCW when before the date of timely payment a notice of dispute is issued in good faith by the CITY to the ENGINEER pursuant to the terms of RCW 39.76.020(4).
- 5.5 Final payment of any balance due the ENGINEER for PROJECT services will be made within forty-five (45) days after satisfactory completion of the services required by this Agreement as evidenced by CITY's written acceptance and after such audit or verification as CITY may deem necessary, together with ENGINEER's execution and delivery of a release of all known payment claims against CITY arising under or by virtue of this Agreement, other than such payment claims, if any, as may be specifically exempted by the ENGINEER from the operation of the release in stated amounts to be set forth therein.
- 5.6 Payment for any PROJECT services and WORK shall not constitute a waiver or release by CITY of any claims, right, or remedy it may have against the ENGINEER under this Agreement or by law, nor shall such payment constitute a waiver, remission, or discharge by CITY of any failure or fault of the ENGINEER to satisfactorily perform the PROJECT WORK as required under this Agreement.

SECTION 6 RESPONSIBILITY OF ENGINEER

- 6.1 The ENGINEER shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all plans, designs, drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or review any errors, omissions, or other deficiencies in its plans, designs, drawings, specifications, reports, and other services. The ENGINEER shall perform its WORK according to

generally accepted civil engineering standards of care and consistent with achieving the PROJECT WORK within budget, on time, and in compliance with applicable laws, regulations, and permits.

- 6.2 CITY'S review or approval of, or payment for, any plans, drawings, designs, specifications, reports, and incidental WORK or services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy, completeness, or accuracy of its WORK and the PROJECT WORK. CITY'S review, approval, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or at law or any cause of action arising out of the performance of this Agreement.
- 6.3 In performing WORK and services hereunder, the ENGINEER and its subcontractors, subconsultants, employees, agents, and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of CITY in any manner whatsoever. The ENGINEER shall not hold itself out as, nor claim to be, an officer or employee of CITY by reason hereof and shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of CITY. The ENGINEER shall be solely responsible for any claims for wages or compensation by ENGINEER's employees, agents, and representatives, including subconsultants and subcontractors, and shall save and hold CITY harmless therefrom.
- 6.4 INDEMNIFICATION:
- (a) ENGINEER agrees to defend, indemnify, and hold harmless the CITY, its elected and appointed officials, agents, officers, employees and volunteers (hereinafter "parties protected") from (1) claims, demands, liens, lawsuits, administrative and other proceedings, (including reasonable costs and attorney's fees) and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses of any kind claimed by third parties arising out of, or related to any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error, omission or willful misconduct arising out of the Engineer's performance under this Agreement. In the event that any lien is placed upon the City's property or any of the City's officers, employees or agents as a result of the negligence or willful misconduct of the Engineer, the Engineer shall at once cause the same to be dissolved and discharged by giving bond or other necessary satisfaction.
 - (b) CITY agrees to indemnify and hold the ENGINEER harmless from loss, cost, or expense of any kind claimed by third parties, including without limitation such loss, cost, or expense resulting from injuries to persons or damages to property, caused solely by the negligence or willful misconduct of the CITY, its employees, or agents in connection with the PROJECT.
 - (c) If the negligence or willful misconduct of both the ENGINEER and the CITY (or a person identified above for whom each is liable) is a cause of such third party claim, the loss, cost, or expense shall be shared between the ENGINEER and the CITY in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.
 - (d) Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.
- 6.5 In any and all claims by an employee of the ENGINEER, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the ENGINEER or a subcontractor under workers'

or workmens' compensation acts, disability benefit acts, or other employee benefit acts. The ENGINEER specifically and expressly waives its immunity under the Industrial Insurance Act, Title 51, RCW. Such waiver has been mutually negotiated by the ENGINEER and the CITY.

- 6.6 It is understood that any resident engineering or inspection provided by ENGINEER is for the purpose of determining compliance with the technical provisions of PROJECT specifications and does not constitute any form of guarantee or insurance with respect to the performance of a contractor. ENGINEER does not assume responsibility for methods or appliances used by a contractor, for a contractor's safety programs or methods, or for contractors' compliance with laws and regulations. CITY shall use its best efforts to ensure that the construction contract requires that the contractor(s) indemnify and name CITY, the CITY's and the ENGINEER's officers, principals, employees, agents, representatives, and engineers as additional insureds on contractor's insurance policies covering PROJECT, exclusive of insurance for ENGINEER professional liability.
- 6.7 SUBSURFACE INVESTIGATIONS: In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observation, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER, to the extent that ENGINEER has exercised the applicable and appropriate standard of professional care, thoroughness and judgment in performing such investigations.

SECTION 7 PROJECT SCHEDULE AND BUDGET

- 7.1 The general PROJECT schedule and the budget for both the entire PROJECT and its component tasks shall be as set forth in this Agreement and attached Exhibits. The project schedule and performance dates for the individual tasks shall be mutually agreed to by the CITY and the ENGINEER within fifteen (15) days after execution of this Agreement. The performance dates and budgets for tasks may be modified only upon written agreement of the parties hereto. The performance date for tasks and the completion date for the entire PROJECT shall not be extended, nor the budget increased because of any unwarranted delays attributable to the ENGINEER, but may be extended or increased by the CITY in the event of a delay caused by special services requested by the CITY or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the ENGINEER which could not be reasonably anticipated or avoided.
- 7.2 Not later than the tenth (10th) day of each calendar month during the performance of the PROJECT, the ENGINEER shall submit to the CITY's Representative a copy of the current schedule and a written narrative description of the WORK accomplished by the ENGINEER and subconsultants on each task, indicating a good faith estimate of the percentage completion thereof on the last day of the previous month. Additional oral or written reports shall be prepared at the CITY's request for presentation to other governmental agencies and/or to the public.

SECTION 8 REUSE OF DOCUMENTS

- 8.1 All internal WORK products of the ENGINEER are instruments or services of this PROJECT. There shall be no reuse, change, or alteration by the CITY or others acting through or on behalf of the CITY without written permission of the ENGINEER, which shall not be unreasonably withheld and will be at the CITY's sole risk. The CITY agrees to indemnify the ENGINEER and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change, or alteration;

provided, however, that the ENGINEER will not be indemnified for such claims, damages, losses, and costs including, without limitation, litigation expenses and attorney fees if they were caused by the ENGINEER's own negligent acts or omissions.

- 8.2 The ENGINEER agrees that any and all plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other WORK submitted or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement, whether or not complete, shall be owned by and vested in the CITY.
- 8.3 All rights to patents, trademarks, copyrights, and trade secrets owned by ENGINEER (hereinafter "Intellectual Property") as well as any modifications, updates or enhancements to said Intellectual Property during the performance of the WORK remain the property of ENGINEER, and ENGINEER does not grant CITY any right or license to such Intellectual Property.

SECTION 9 AUDIT AND ACCESS TO RECORDS

- 9.1 The ENGINEER, including its subconsultants, shall maintain books, records, documents and other evidence directly pertinent to performance of the WORK under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The CITY, or the CITY's duly authorized representative, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying for a period of three years after completion of the PROJECT. The CITY shall also have access to such books, records, and documents during the performance of the PROJECT WORK, if deemed necessary by the CITY, to verify the ENGINEER's WORK and invoices.
- 9.2 Audits conducted pursuant to this section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agency.
- 9.3 The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to this section provided that the ENGINEER is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include ENGINEER's written comments, if any.
- 9.4 The ENGINEER shall ensure that the foregoing paragraphs are included in each subcontract for WORK on the Project.
- 9.5 Any charges of the ENGINEER paid by the CITY which are found by an audit to be inadequately substantiated shall be reimbursed to the CITY.

SECTION 10 INSURANCE

- 10.1 At all times during performance of the WORK, ENGINEER shall secure and maintain in effect insurance to protect the CITY and the ENGINEER from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Agreement. ENGINEER shall provide and maintain in force insurance in limits no less than those stated below, as applicable. The CITY reserves the right to require higher limits should it deem it necessary in the best interest of the public. If ENGINEER carries higher coverage limits than the limits stated below, such higher limits shall be shown on the Certificate of Insurance and Endorsements and ENGINEER shall be named as an additional insured for such higher limits.

10.1.1 **Commercial General Liability Insurance.** Before this Agreement is fully executed by the parties, ENGINEER shall provide the CITY with a certificate of insurance as proof of commercial liability insurance and

commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the CITY, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

10.1.2. Commercial Automobile Liability Insurance.

a. If ENGINEER owns any vehicles, before this Agreement is fully executed by the parties, ENGINEER shall provide the CITY with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate.

b. If ENGINEER does not own any vehicles, only "Non-owned and Hired Automobile Liability" will be required and may be added to the commercial liability coverage at the same limits as required in that section of this Agreement, which is Section 10.1.1 entitled "Commercial General Liability Insurance".

c. Under either situation described above in Section 10.1.2.a. and Section 10.1.2.b., the required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the CITY, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

10.1.3. Statutory workers' compensation and employer's liability insurance as required by state law.

10.1.4. **Professional Liability Coverage.** Before this Contract is fully executed by the parties, ENGINEER shall provide the City with a certificate of insurance as proof of professional liability coverage with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per claim, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The insured shall not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claims made basis the coverage will continue in force for an additional two years after the completion of this contract.

Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the CITY, its elected and appointed officials, officers, employees, agents, and representatives there under. The CITY and the CITY's elected and appointed officials, officers, principals, employees, representatives, and agents shall have no obligation

for payment of premiums because of being named as additional insureds under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to expire, or changed in any manner that affects the rights of the CITY until thirty (30) days after written notice to the CITY of such intended cancellation, expiration or change.

SECTION 11 SUBCONTRACTS

- 11.1 ENGINEER shall be entitled, to the extent determined appropriate by ENGINEER, to subcontract any portion of the WORK to be performed under this Agreement.
- 11.2 Any subconsultants or subcontractors to the ENGINEER utilized on this PROJECT, including any substitutions thereof, will be subject to prior approval by CITY, which approval shall not be unreasonably withheld. Each subcontract shall be subject to review by the CITY's Representative, if requested, prior to the subconsultant or subcontractor proceeding with the WORK. Such review shall not constitute an approval as to the legal form or content of such subcontract. The ENGINEER shall be responsible for the architectural and engineering performance, acts, and omissions of all persons and firms performing subcontract WORK.
- 11.3 CITY does not anticipate ENGINEER subcontracting with any additional persons or firms for the purpose of completing this Agreement.
- 11.4 The ENGINEER shall submit, along with its monthly invoices, a description of all WORK completed by subconsultants and subcontractors during the preceding month and copies of all invoices thereto.

SECTION 12 ASSIGNMENT

- 12.1 This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by CITY or ENGINEER without prior written consent of the other, which consent will not be unreasonably withheld. It is expressly intended and agreed that no third party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.

SECTION 13 INTEGRATION

- 13.1 This Agreement represents the entire understanding of CITY and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

SECTION 14 JURISDICTION AND VENUE

- 14.1 This Agreement shall be administered and interpreted under the laws of the State of Washington. Jurisdiction of litigation arising from this Agreement shall be in Washington State. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect. Venue for all disputes arising under this Agreement shall lie in a court of competent jurisdiction in Yakima County, Washington.

SECTION 15 EQUAL EMPLOYMENT and NONDISCRIMINATION

- 15.1 During the performance of this Agreement, ENGINEER and ENGINEER's subconsultants and subcontractors shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. ENGINEER agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

SECTION 16 SUSPENSION OF WORK

- 16.1 CITY may suspend, in writing by certified mail, all or a portion of the WORK under this Agreement if unforeseen circumstances beyond CITY's control are interfering with normal progress of the WORK. ENGINEER may suspend, in writing by certified mail, all or a portion of the WORK under this Agreement if unforeseen circumstances beyond ENGINEER's control are interfering with normal progress of the WORK. ENGINEER may suspend WORK on the PROJECT in the event CITY does not pay invoices when due, except where otherwise provided by this Agreement. The time for completion of the WORK shall be extended by the number of days WORK is suspended. If the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to renegotiation, and both parties are granted the option to terminate WORK on the suspended portion of Project in accordance with SECTION 17.

SECTION 17 TERMINATION OF WORK

- 17.1 Either party may terminate this Agreement, in whole or in part, if the other party materially breaches its obligations under this Agreement and is in default through no fault of the terminating party. However, no such termination may be effected unless the other party is given: (1) not less than fifteen (15) calendar days written notice delivered by certified mail, return receipt requested, of intent to terminate; and (2) an opportunity for consultation and for cure with the terminating party before termination. Notice shall be considered issued within seventy-two (72) hours of mailing by certified mail to the place of business of either party as set forth in this Agreement.
- 17.2 In addition to termination under subsection 17.1 of this Section, CITY may terminate this Agreement for its convenience, in whole or in part, provided the ENGINEER is given: (1) not less than fifteen (15) calendar days written notice delivered by certified mail, return receipt requested, of intent to terminate; and (2) an opportunity for consultation with CITY before the effective termination date.
- 17.3 If CITY terminates for default on the part of the ENGINEER, an adjustment in the contract price pursuant to the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other WORK, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to the extent of any additional costs or damages CITY has incurred, or is likely to incur, because of the ENGINEER'S breach. In such event, CITY shall consider the amount of WORK originally required which was satisfactorily completed to date of termination, whether that WORK is in a form or of a type which is usable and suitable to CITY at the date of termination and the cost to CITY of completing the WORK itself or of employing another firm to complete it. Under no circumstances shall payments made under this provision exceed the contract price. In the event of default, the ENGINEER agrees to pay CITY for any and all damages, costs, and expenses whether directly, indirectly, or consequentially caused by said default. This provision shall not preclude CITY from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by contract retainage or other withheld payments.

- 17.4 If the ENGINEER terminates for default on the part of CITY or if CITY terminates for convenience, the adjustment pursuant to the Agreement shall include payment for services satisfactorily performed to the date of termination, in addition to termination settlement costs the ENGINEER reasonably incurs relating to commitments which had become firm before the termination, unless CITY determines to assume said commitments.
- 17.5 Upon receipt of a termination notice under subsections 17.1 or 17.2 above, the ENGINEER shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to CITY all originals of data, drawings, specifications, calculations, reports, estimates, summaries, and such other information, documents, and materials as the ENGINEER or its subconsultants may have accumulated or prepared in performing this Agreement, whether completed or in progress, with the ENGINEER retaining copies of the same.
- 17.6 Upon termination under any subparagraph above, CITY reserves the right to prosecute the WORK to completion utilizing other qualified firms or individuals; provided, the ENGINEER shall have no responsibility to prosecute further WORK thereon.
- 17.7 If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER has not so failed, the termination shall be deemed to have been effected for the convenience of CITY. In such event, the adjustment pursuant to the Agreement shall be determined as set forth in subparagraph 17.4 of this Section.
- 17.8 If, because of death, unavailability or any other occurrence, it becomes impossible for any key personnel employed by the ENGINEER in PROJECT WORK or for any corporate officer of the ENGINEER to render his services to the PROJECT, the ENGINEER shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of CITY. If CITY agrees to termination of this Agreement under this provision, payment shall be made as set forth in subparagraph 17.3 of this Section.

SECTION 18 DISPUTE RESOLUTION

- 18.1 In the event that any dispute shall arise as to the interpretation or performance of this Agreement, or in the event of a notice of default as to whether such default does constitute a breach of the contract, and if the parties hereto cannot mutually settle such differences, then the parties shall first pursue mediation as a means to resolve the dispute. If neither of the afore mentioned methods are successful then any dispute relating to this Agreement shall be decided in the courts of Yakima County, in accordance with SECTION 14. If both parties consent in writing, other available means of dispute resolution may be implemented.

SECTION 19 NOTICE

- 19.1 Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party, or seventy-two (72) hours after mailing by certified mail to the place of business set forth below, whichever is earlier.

CITY:

City of Yakima

Yakima, WA 98901

Attn:

ENGINEER: _____

Attn:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year first above written.

CITY OF YAKIMA

XXXXXXXXXXXXXXXXXX

[City Manager]

Signature

Printed Name: _____

Printed Name: _____

Title: City Manager _____

Title: _____

Date: _____

Date: _____

Attest _____

City Clerk

STATE OF WASHINGTON)

) ss.

COUNTY OF YAKIMA)

I certify that I know or have satisfactory evidence that Cliff Moore is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the CITY MANAGER of the CITY OF YAKIMA, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Seal or Stamp

(Signature)

Title

Printed Name

My commission expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF YAKIMA)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Seal or Stamp

(Signature)

Title

Printed Name

My commission expires: _____

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

Professional Fees

EXHIBIT "C"

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1)** All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2)** That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.