

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT is made and entered into by and between the City of Yakima, a Washington municipal corporation (hereinafter the "City"), and PayneWest Insurance, Inc., a corporation (hereinafter the "Contractor").

WHEREAS, the City of Yakima requires professional services related to insurance brokerage services for Property & Casualty Broker and Risk Management Services for the City of Yakima;

WHEREAS, the Contractor represents that it has the expertise necessary and is willing to perform the professional services required by the City in accordance with the terms and conditions of this Contract;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and Contractor as follows:

Section 1. Statement of Work

1.1 The minimum services that the Contractor will provide include:

- (a) Market and advise the City on its insurance coverage;
- (b) Prepare claims reports when requested by the City;
- (c) Provide risk management services, including but not limited to review of vendor certificates of insurance to meet contract requirements; advise on wording for insurance requirements and the amounts of appropriate insurance coverage in City contracts; and training for City personnel as required.

1.2 Contractor shall provide the services and staff described in the text of the Professional Services Contract, including the services described in Exhibit "A," which is incorporated herein by this reference. The services are included within the base fee. The Professional Services Contract and Exhibit "A" are referred to herein as the "Contract." The Contract specifies the working relationship between the City and the Contractor, and specific obligations of both parties.

1.3 Contract Documents: The rights granted under this Contract include the terms, conditions, covenants and representations contained in the following documents, all of which are incorporated herein by reference as though fully set forth:

- 1.3.1 This Contract, including Exhibit A to the Contract, and the documents referenced in this Paragraph shall be construed consistently with each other in order to best effectuate the intent of the Owner and Contractor as set forth in this Contract.

The parties acknowledge that there are no other representations, agreements, or conditions not specifically referred to or set forth in the foregoing documents which are a part of this Contract.

- 1.4 Except as otherwise specifically provided in this Contract, Contractor shall furnish the following, all as the same may be required to perform the services described in paragraphs 1.1 and 1.2 in accordance with this Contract, including Exhibit A to the Contract: personnel, labor and supervision; and technical, professional and other services. All such services, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by Contractor under this Contract are sometime collectively referred to in this Contract as the "Services."
- 1.5 All provisions of this Contract are intended to be complementary, and any Services required by one and not mentioned in another shall be performed to the same extent as though required by all. Details of the Services that are not necessary to carry out the intent of this Contract, but that are not expressly required, shall be performed or furnished by Contractor as part of the Services, without any increase in the compensation otherwise payable under this Contract.

Section 2. Period of Performance

- 2.1 The period of performance under this Contract will be three (3) years, commencing on September 1, 2019, and continuing through August 31, 2022. An additional extension of two (2) years may be offered, at the option of the City, making the total contract term five (5) years, to August 31, 2024. In the event the City elects to extend the Contract for an additional two-year (2-year) term, the City shall provide written notice to the Contractor at least ninety (90) days prior to the end of the initial three-year (3-year) Contract period, or on or before June 2, 2022. The City's option to extend the Contract for an additional two-year (2-year) term is subject to a mutually satisfactory agreement between the parties on the value of the services during the additional two-year (2-year) period, and is further subject to approval by the City Council at a City Council business meeting if the compensation is more than \$80,000 in either year of the two-year (2-year) extension. If the annual compensation is \$80,000 or less for the additional two-year (2-year) term, then the City Manager has the authority to sign the two-year (2-year) extension without the specific approval of the City Council at a business meeting.

Section 3. Compensation

- 3.1 As full compensation for satisfactory performance of the Services, City shall pay Contractor Eighty Thousand Dollars (\$80,000) for the first year of the Contract, Eighty Thousand Dollars (\$80,000) for the second year of the Contract, and Eighty Thousand Dollars (\$80,000) for the third year of the Contract. At the end of this term, the parties may extend this Contract under terms and conditions then agreed. The three-year term of the Contract is subject to an option to extend for two (2) additional years if the City and Contractor can reach a mutually satisfactory agreement on the value of the services for the additional two-year (2-year) period and as provided in Section 2.1 above.
- 3.2 Each annual fee shall be paid by the City to Contractor in three installments, in four-month intervals. The three invoices that will be submitted each year by Contractor to the City of Yakima will be submitted on or about January 1, May 1, and September 1 of each year. The first invoice for the first year of the Contract will be submitted on or about January 1, 2020.
- 3.3 City of Yakima shall pay each of Contractor's invoices within thirty (30) days after the City's receipt and verification thereof; provided, however, that all such payments are expressly conditioned upon Contractor providing services hereunder that is satisfactory to the City.
- 3.4 Any additional service(s) provided by the Contractor which are to be paid by the City must have prior written approval of the City.

Section 4. Performance by Contractor

- 4.1 Delegation of Professional Services. The services provided for herein shall be performed by Contractor, and no person other than regular associates or employees of Contractor shall be engaged on such work or services. Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of the City. Any such delegation or subcontracting without the City's prior written consent shall be voidable at the City's option.

No delegation of subcontracting of performance of any of the Services, with or without the City's prior written consent, shall relieve Contractor of its responsibility to perform the Services in accordance with this Contract. Contractor shall be fully responsible for the performance, acts and omissions of Contractor's employees, Contractor's subcontractors, and any other person who performs or furnishes any Services (collectively, the "Support").

- 4.2 Contractor shall at all times be an independent contractor and not an agent or representative of the City with regard to performance of the Services. Contractor shall not represent that it is, nor hold itself out as, an agent or representative of the City. In no event shall

Contractor be authorized to enter into any agreement or undertaking for or on behalf of the City.

- 4.3 Contractor shall perform the Services in a timely manner and in accordance with the standards of the profession. At the time of performance, Contractor shall be properly licensed, equipped, organized, and financed to perform the Services in accordance with this Contract. Subject to compliance with the requirements of this Contract, Contractor shall perform the Services in accordance with its own methods.
- 4.4 Contractor shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the Services.

Section 5. Compliance with Laws

- 5.1 Contractor shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now in effect, of any governmental authority (including, but not limited to, such requirements as may be imposed upon the City and applicable to the Services). Contractor shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules and orders required to be incorporated in agreements of this character are incorporated in this Contract by this reference.

Section 6. Taxes and Assessments

- 6.1 Contractor shall be solely responsible for and shall pay all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury insurance, and other deductions from income which may be required by law or assessed against either party as a result of this Contract. In the event the City is assessed a tax or assessment as a result of this Contract, Contractor shall pay the same before it becomes due.

Section 7. Nondiscrimination Provision

- 7.1 During the performance of this Contract, Contractor shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap, 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 Contract.

Section 8. Inspection: Examination of Records

- 8.1 The records relating to the Services shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.
- 8.2 Contractor shall promptly furnish the City with such information which is related to the Services of this Contract as may be requested by the City. Until the expiration of three (3) years after final payment of the compensation payable under this Contract, Contractor shall provide the City access to (and the City shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services of this Contract.

Section 9. Property and Confidential Information

- 9.1 Contractor shall not, without the prior written consent of the City, disclose to third parties, other than insurance companies for placement purposes, any information received in connection with the Services unless:
- (a) information is known to Contractor prior to receiving the same directly or indirectly in connection with the Services;
 - (b) information is in the public domain at the time of disclosure by Contractor; or
 - (c) information is received by Contractor from a third party who does not have an obligation to keep the same confidential.

Section 10. Indemnification and Hold Harmless

- 10.1 Contractor agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from death or bodily injury to any person or damage or destruction to a third party or third parties to the extent caused by any negligent act and/or omission of the Contractor, its officers, employees, agents, and/or subcontractors, arising out of the performance of this Contract.
- 10.2 Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

Section 11. Insurance Provided by Contractor

- 11.1 At all times during performance of the Services, the Contractor shall secure and maintain in effect insurance to protect the City and the Contractor from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Contract. Contractor shall provide and maintain in force insurance in limits no less than that 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.
- 11.2 Commercial Liability Insurance. Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit bodily injury and property damage, and Five Million Dollars (\$5,000,000.00) general aggregate. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City of Yakima, its elected officials, officers, agents, and employees shall be named as additional insureds for such higher limits. 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 policy and Endorsements shall name the City of Yakima, its elected officials, officers, agents, and employees as additional insureds, and shall contain a clause that the insurer will 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.
- 11.3 Commercial Automobile Liability Insurance. Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a minimum liability limit of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit bodily injury and property damage. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City of Yakima, its elected officials, officers, agents, and employees shall be named as additional insureds for such higher limits. Automobile liability will apply to "Any Auto" and be shown on the certificate. 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 policy and Endorsements shall name the City of Yakima, its elected officials, officers, agents, and employees as additional insureds, and shall contain a clause that the insurer will 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.
- 11.4 Professional Liability Insurance. Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as evidence of Professional

Errors and Omissions Liability Insurance with coverage of at least Fifteen Million Dollars (\$15,000,000.00) per occurrence and an annual aggregate limit of at least Fifteen Million Dollars (\$15,000,000.00). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company rated A-VII or higher in Best's Guide. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of the Contract, or shall provide full prior acts. The insurance coverage shall remain in effect during the term of this Contract and for a minimum of three (3) years following the termination of this Contract.

Section 12. Changes

- 12.1 The City may, at any time by written notice thereof to Contractor, make changes in the Services within the general scope of this Contract (including, but not limited to, additions to or deletions from any Services, suspension of performance and changes and location of performance).
- 12.2 If any change under paragraph 12.1 causes a significant increase or decrease in the cost of the time required for performance of the Services, an equitable adjustment in the compensation and schedules under this Contract shall be negotiated to reflect such increase or decrease, and this Contract shall be modified in writing accordingly. Such equitable adjustment shall constitute full compensation to Contractor for such change. If any change under paragraph 12.1 results in a decrease in the Services to be performed, Contractor shall not be entitled to anticipated profit on Services not performed and the loss of anticipated profit shall not reduce the decrease in compensation under this Contract resulting from such exchange. Further, Contractor shall not be entitled to any reallocation of cost, profit or overhead.
- 12.3 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment under paragraph 12.2, Contractor shall immediately proceed with performance of the Services as changed pursuant to paragraph 12.1. If Contractor intends to assert a claim for equitable adjustment under paragraph 12.2, Contractor must, within sixty (60) days after Contractor's receipt of any notice under paragraph 12.1 that does not set forth an acceptable adjustment, submit to the City a written statement of the basis and nature of the adjustment claimed. Contractor shall not be entitled to any adjustment unless such written statement is submitted by Contractor to the City within the applicable period.

Section 13. Termination

- 13.1 The City may, by giving the Contractor sixty (60) calendar days written notice of termination, terminate this Contract as to all or any portion of the Services not then performed, whether or not Contractor is in breach or default, and with or without cause. Upon receipt of any such notice of termination, Contractor shall, except as otherwise

directed by the City, immediately stop performance of the Services to the extent specified in such notice. Contractor shall have the same termination rights as the City in Section 13.

- 13.2 In the event of termination pursuant to paragraph 13.1, an equitable adjustment shall be made in the compensation payable to Contractor under this Contract, provided that such compensation as so adjusted shall in no event exceed a percentage of the total compensation otherwise payable under this Contract equal to the percentage of the Services satisfactorily completed at the time of termination. Further, Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on Services not performed on account of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination.
- 13.3 If the City purports to terminate or cancel all or any part of this Contract for Contractor's breach or default when Contractor is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed to have been a termination by the City pursuant to paragraph 13.1 and the rights of the parties shall be determined accordingly.

Section 14. Miscellaneous

- 14.1 Assignment. This Contract, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Contractor to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Contractor stated herein.
- 14.2 No Conflict of Interest. Contractor represents that it or its employees do not have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Contract.
- 14.3 No Insurance. It is understood that the City does not maintain liability insurance for Contractor and/or its employees.
- 14.4 Severability. If any portion of this Contract is changed per mutual agreement or any portion is held invalid, the remainder of the Contract shall remain in full force and effect.
- 14.5 Integration. This written document constitutes the entire agreement between the City and Contractor. There are no other oral or written Contracts between the parties as to the subjects covered herein. No changes or additions to this Contract shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

- 14.6 Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties to their addresses as follows:

TO CITY:	Steve Groom, Finance & Budget Director City of Yakima Finance Department City Hall – First Floor 129 North Second Street Yakima, WA 98901	AND TO:	Helen A. Harvey Senior Assistant City Attorney City of Yakima Legal Department 200 South Third Street Yakima, WA 98901
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TO CONTRACTOR: Jeff Widdows, Commercial Account Executive
PayneWest Insurance, Inc.
1430 N. 16th Ave., Bldg. H
Yakima, WA 98902

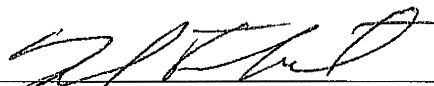
or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when hand delivered at the addresses specified above, or three (3) days after the date of mailing to the addresses specified above.

- 14.7 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington.
- 14.8 Venue. The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Yakima County, Washington.

CITY OF YAKIMA

PAYNEWEST INSURANCE, INC.

By _____
Cliff Moore, City Manager

By  _____
Mark A. Theriault
Its: Managing Director of Specialty Practices

Date: _____

Date: 7/24/19

ATTEST:

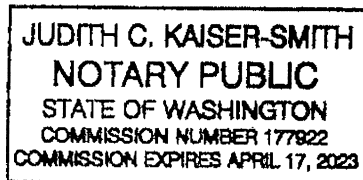
By _____
City Clerk

City Contract No. 2019-_____
Resolution No. R-2019-_____

STATE OF wa)
) ss.
COUNTY OF Spokane)

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

DATED this 24th day of July, 2019.



Judith C. Kaiser-Smith
Print Name: JUDITH C. KAISER-SMITH
NOTARY PUBLIC in and for the State of
Washington, residing at Spokane, WA
My appointment expires: April 17, 2023

EXHIBIT A
TO PROFESSIONAL SERVICES CONTACT

All services will be provided by the Contractor, PayneWest Insurance, Inc. In addition to the services in Section 1 of the Contract, services included within the base fee shall include the following:

A. Brokerage Services.

1. Exposure Identification and Evaluation
2. Insurance Program Audit (The Review of Existing Insurance Policies to Determine Adequacy of Coverage, Adequacy of Limits, Appropriate Deductible/Retention Levels, Significant Restrictions in Coverage, the Existence of Warranties, Concurrency of Coverage, Duplications or Gaps in Coverage, Suitability of Forms, Financial Stability of Insurers and Insurer Service Capability)
3. Insurance Program Design (The Drafting of Insurance Policy Specifications to Address Exposures to Loss Confronting Client)
4. Property, Casualty and Marine Marketing of Coverages and Related Services:
 - a. The Preparation of Appropriately Detailed Coverage Specifications
 - b. The Submission of Specifications to Selected Markets/Vendors
 - c. The Negotiation of Coverage and Pricing at Decision Making Level
 - d. The Evaluation of Alternatives in Accordance with Client Determined Priorities
 - e. The Preparation of Presentation and Recommendations to Client
5. The Verification of all Requested New and Renewal Policy Terms, Conditions, Rates and Premiums
6. The Verification of Insurance Company Audit Calculations if Applicable
7. The Allocation of Premiums and Premium Adjustments
8. The Review of Client's Contracts (Indemnification Agreements and Insurance Requirements) as requested by the City of Yakima
9. Certificate of Insurance Review for Compliance as requested by the City of Yakima
10. The Monitoring of Insurance Company Services

11. The Monitoring of Insurer Security
12. Insurance Company Liaison Activities (Troubleshooting)
13. Day-To-Day Insurance/Risk Management Advice and Counsel
14. The Preparation of Insurance Certificates
15. The Preparation of Insurance Data for Client's Audits
16. The Maintenance of Client Service Records
17. Annual Service Planning
18. In Depth Annual Account Reviews
19. Annual Stewardship Reports
20. Provide a Certificate of Insurance Tracking Program

B. Risk Management Services.

1. Analysis of Pools and Self-Insurance Plan
2. Periodic Evaluation of Loss Data with Appropriate Action Recommendations
3. Monitoring of Insurance Company or Independent Risk Control Services
4. Review and Negotiation of Insurer Fire Protection Engineering Recommendations
5. Assistance in Selecting Insurance Company/Independent Risk Control Service Providers
6. Day-to-Day Advice and Counsel on Risk Control Related Matters
7. Boiler and Machinery Surveys—Monitoring Carrier Services
8. Training to City Personnel on Insurance Coverage Issues and Obtaining Proper Certificates of Liability Insurance
9. Provide "Succeed" Web-Based Safety and Compliance Training Tool accessible from City offices on a 6 month trial basis without charge. If utilized after the 6 month trial an additional fee will be negotiated.

C. Claims Management Services.

1. The Monitoring of Insurance Company or Independent Claims Services

2. The Resolution of Coverage Questions/Disputes in a Timely and Amicable Fashion
3. Assistance in Locating Qualified Defense Counsel when Special Expertise/Technical Experience is Required such as on Insurance Coverage Issues
4. Day-to-Day Advice and Counsel on Claims Related Matters
5. Evaluating Insurance Company or Vendor Service Performance
6. Assistance in Preparation of Claims Reports for City Council if requested