

For City of Yakima Use Only:
Contract No. _____
Project No. _____
Resolution No. _____
SOQ No. _____

**AGREEMENT
BETWEEN
CITY OF YAKIMA, WASHINGTON
AND
GRAY & OSBORNE, INC.
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into on this _____ day of _____, 2020, 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 Gray & Osborne, Inc. with its principal office at 1130 Rainier Avenue South, Suite 300, Seattle, WA 98144, (hereinafter referred to as "ENGINEER"); said corporation being licensed and registered to do business in the State of Washington, and will provide professional engineering services under this Agreement for the 1st Level Reservoir Repairs and Improvements Project on behalf of the City of Yakima, Project No. AC2533, 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, Don Tulloch, P.E. 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 "1st Level Reservoir Repairs & Improvements" (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 Ninety Thousand Five Hundred Dollars (\$90,500.00). 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 attorneys 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
Water / Irrigation Division
2301 Fruitvale Blvd.
Yakima, WA 98902
Attn: David Brown or Mike Shane

ENGINEER: Gray & Osborne, Inc.
1130 Rainier Ave. S., Suite 300
Seattle, WA 98144
Attn: Michael B. Johnson, President

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

GRAY & OSBORNE, INC.

Robert Harrison

Signature

Printed Name: Robert Harrison

Printed Name: Michael B. Johnson, P.E.

Title: City Manager

Title: President

Date: _____

Date: _____

Attest _____

City Clerk

STATE OF WASHINGTON

)

) ss.

COUNTY OF YAKIMA

)

I certify that I know or have satisfactory evidence that Robert Harrison 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 KING

)

I certify that I know or have satisfactory evidence that **Michael B. Johnson** 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 President of Gray & Osborne, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Seal or Stamp

(Signature)

CFO

Title

Melissa Drysdale

Printed Name

My commission expires: _____ 3/9/2023 _____

EXHIBIT A
SCOPE OF WORK
CITY OF YAKIMA
1ST LEVEL RESERVOIR REPAIRS AND IMPROVEMENTS

PROJECT OVERVIEW

ENGINEER shall complete a full condition assessment of the 1st Level Reservoir located near the intersection of North 40th Avenue and Englewood Avenue. The reservoir has a capacity of 6 million gallons and is the only reservoir serving the 1st Level Pressure Zone in the City and the reservoir is known to be leaking. Gray & Osborne, Inc., is a local professional engineering consultant company with specialized expertise in this type of work.

The work will be performed in phases as identified here:

- Phase 1 – Preparation for Condition Assessment
- Phase 2 – Condition Assessment
- Phase 3 – Pre-Design Report
- Phase 4 – Preparation of Plans, Specifications, and Bid Documents
- Phase 5 – Services During Construction

The detailed scope of work and fees for Phases 4 and 5 cannot be determined until Phases 1, 2, and 3 are completed. An Amendment to this Agreement is anticipated to be executed for the scope of work related to Phases 4 and 5 once it is defined.

The City will arrange for the reservoir to be taken out of service and dewatered to permit access for the condition assessment. Gray & Osborne will work closely with the City to coordinate this work. It is envisioned that the reservoir will only be out of service for a not-to-exceed period of 5 working days to allow access for the on-site investigation. Following the on-site evaluation, the reservoir will be put back into service and Gray & Osborne will prepare a detailed report that summarizes the findings and recommends the repair work to be performed.

Plans and specifications for the various items of repair work will then be prepared and improvements will be constructed. It is envisioned that the constructions of repairs may be performed in late fall or winter during low demand seasons. Depending on the extent of repairs required, this may have to be accomplished over a period of two years.

SCOPE OF WORK

Gray & Osborne and the City have jointly prepared the following detailed scope of work for this project which is provided below.

Task 1 –Project Management

Provide comprehensive project management for the duration of this project. This task will include coordinating and managing the schedule and budget for the consultant team, including subconsultants, as well as coordination with the City's contractors. A project schedule will be developed, and the City will be provided with monthly progress updates. This task will also include coordination with other project stakeholders and regulatory agencies.

PHASE 1 – PREPARATION FOR CONDITION ASSESSMENT

Task 2 – Review Background Information

Review previous reports and record drawings of the reservoir. Review underwater diving inspection videos and reports.

Task 3 – Distribution System Modeling

Prior to taking the 1st Level Reservoir out of service, provide computer modeling of the Yakima water distribution system to confirm the ability to operate the 1st Level Pressure Zone without the reservoir in service. It is anticipated that most of the supply to the first level will be from the Water Treatment Plant. System demands will be based upon historical maximum day demands after the irrigation season has ended.

Task 4 – Design a 30-Inch Butterfly Valve Cut-In

The City wants to have a new isolation valve installed in the reservoir fill and supply line in Englewood Avenue near North 32nd Avenue. This will provide added flexibility for operating the water system without the reservoir in service. Design of the 30-inch butterfly valve cut-in will be the first item of work and services will include topographic surveying, preparation of plans, specifications and contract documents, bidding and award services, and construction management services. The pipe is concrete cylinder pipe. The construction will be performed while the reservoir is out of service for the condition assessment.

PHASE 2 – CONDITION ASSESSMENT

Task 5 – Perform Field Condition Assessment

Complete field inspections of the reservoir and complete preliminary design analysis. Gray & Osborne will provide the following services to support completion of this task.

Review Structure Interior - Complete inspection of the reservoir interior to identify the condition of the facility and identify items needing repair or replacement.

- *Roof Structural Inspection* – The reservoir will be partially drained to allow access for structural review by boat or kayak. This work will be a visual inspection of the roof structural elements for distress such as rust, corrosion, cracking, spalling, exposed reinforcing steel, etc. The roof inspection will include observation of roof-to-column connections and roof-to-wall connections and this information will be used in the seismic evaluation. Structural conditions at hatches will be investigated to plan for repair or enlargement should that be necessary. Roof slab joints will be visually inspected. Note: The top surface of the reservoir has a membrane coating and cannot be inspected without cutting and patching the membrane at numerous locations. Top surface condition of the membrane will be visual only and the exterior seams will be inspected to determine any necessary repairs.
- *Slab Structural Inspection* – After the reservoir has been drained, an inspection of the interior walls and floor slab sections will be performed. The concrete condition, concrete cracks, spalling, and rusting reinforcing steel will be noted and mapped on each slab. The condition of the floor slab joints will be inspected.
- *Check Reservoir Appurtenances for Compliance with DOH Design Manual*. This inspection will include condition assessments of all reservoir appurtenances such as access openings, vents, screens, ladders, anti-vortex devices, grates, overflows, etc. will be inspected for compliance with the current Washington Department of Health Design Manual.
- *Coordinate Ground Penetrating Radar (GPR) Investigation* – The City will contract directly with a GPR services company to determine if voids are present under the slabs and slab joints. Gray & Osborne will coordinate the GPR services to be performed while the reservoir is drained. The City will furnish the GPR report and mapping to Gray & Osborne for use in preparing plans, quantities, and specifications for grouting any voids and performing slab repairs.
- *Coordinate CCTV Inspection of Inlet/Outlet Pipe* – The City will contract directly with a CCTV inspection company to determine the condition of the existing pipes inside the reservoir and the condition of the existing buried pipes outside of the reservoir. Gray & Osborne will coordinate the CCTV inspection to be performed while the reservoir is

drained. The City will furnish the CCTV inspection video to Gray & Osborne for review and use in determining the pipe repair or replacement methods required, including preparing plans, quantities, and specifications.

Task 6 – Perform Seismic Analysis

Based upon field observations made during the Field Condition Assessment, identify Reservoir Seismic Performance Objectives. This will include:

- *Review Criticality of The Reservoir* – Define seismic performance objectives in accordance with ASCE 41-13.
- *Complete Geotechnical Assessment of the Reservoir Site* – The soil logs provided on the Record Drawings for the 1st Level Reservoir will be used by PanGEO, Inc. to develop seismic analysis and design criteria. No soil borings are included. Complete seismic slope stability analysis and provided seismic earth pressure recommendations with updated seismic design parameters. Develop foundation bearing capacities. Obtain geotechnical report on findings.
- *Complete Seismic Hazard and Response Analysis* – This will determine seismic design parameters by code-based methods.
- *Complete Seismic Evaluation of the Reservoir* – Complete seismic evaluation for the reservoir using defined seismic performance objectives. Check strength and deformation compatibility of all components of the reservoir in accordance with current building code requirements. Identify live load capacity for the roof of the reservoir.

PHASE 3 – PREDESIGN REPORT

Task 7 – Prepare Pre-design Report

Identify Deficiencies and Evaluate Potential Improvement Alternatives

- *Characterize All Deficiencies and Identify Improvement Alternatives* – Any related reservoir component deficiencies (such as floor voids, piping, drains, vents, and access) will also be identified. Evaluate retrofit options using several criteria, including minimizing impact to reservoir operation and construction cost. At least two retrofit options will be generated for each deficiency.
- *Prepare Draft Pre-Design Report* – Prepare a draft Pre-Design Report for the project. The report will document all the findings of the various condition assessment evaluations including the seismic analysis, the GPR investigation, the CCTV investigation, etc. The report will incorporate the alternatives analyses for correcting identified deficiencies and document proposed improvements. The Pre-Design Report will meet the requirements of WAC 246-290-110 for a project report.

Task 8 – Complete QA/QC of Pre-design Report

- *Complete Internal QA/QC Review* – Conduct Quality Assurance/Quality Control reviews of the Pre-Design Report. The draft report will then be submitted to the City for review. Gray & Osborne will meet with City staff to review the report.

Task 9 – Submit Final Pre-design Report

- *Prepare Final Pre-design Report* – Address any review comments provided by the City and prepare a final Pre-design Report for the project.
- *Submit Report to DOH* – The final Pre-design Report will be submitted to the Department of Health for review and approval of the project.

PHASE 4 – DESIGN IMPROVEMENTS

The results of the work performed under the first three phases will determine the scope of work for this phase. An amendment to the agreement is anticipated to be executed after the scope of work can be defined.

PHASE 5 – CONSTRUCTION MANAGEMENT SERVICES

The results of the work performed under the first four phases will determine the scope of work for this phase. An amendment to the agreement is anticipated to be executed after the scope of work can be defined.

ASSUMPTIONS

The following assumptions have been made in developing this scope of work. Preliminary engineering and alternatives analyses will be completed during preliminary design that will further define the improvements to be constructed.

1. The City will drain the reservoir during the pre-design evaluation to allow Gray & Osborne personnel access to the reservoirs for inspection. We understand that the reservoir will be drained slightly to allow for the inspection of the underside of the reservoir roof. Once that is completed, the City will drain the reservoir completely.
2. Separate bid packages may need to be prepared depending on the extent of work and potential schedule impacts.
3. The City will provide assistance in the setup of the computer modeling including non-irrigation season demand flows and historical flow and head information for the Water Treatment Plant.
4. The City will contract directly with the GPR services company and with the CCTV company.
5. Gray & Osborne will coordinate and attend up to 10 meetings throughout the project, some of which may be virtual meetings.

BUDGET

Based on the Scope of Work described herein the total estimated cost for engineering services is **\$90,500.00** as shown in the attached Exhibit "B".

DELIVERABLES

Deliverables will be provided in the following format:

- Reports – two paper copies
- Plans and Specifications – five paper copies of each submittal
- Test Reports and Other Project Documentation – three paper copies
- Record Drawings – three paper copies

Electronic files will also be supplied for each deliverable.

PROJECT SCHEDULE

The anticipated project schedule is contingent upon legal review, council meeting, and Agreement processing. The dates shown below are anticipated completion dates with the main goal to have the reservoir back in service before the irrigation season which begins in early to mid-April every year. The schedule will be updated after receipt of the Notice to Proceed.

City Council Approval/Notice to Proceed December 8, 2020

Phase 1

Task 2: Review Background Information December 18, 2020

Task 3: Distribution System Modeling..... January 8, 2021

Task 4: Butterfly Valve Advertise for Bid..... January 29, 2021

Task 4: Open Bids.....February 19, 2021

Reservoir Drained March 26, 2021

Phase 2

Task 4: Construct Butterfly Valve Cut-In.....April 2, 2021

Task 5: Perform Field Condition Assessment.....April 2, 2021

Task 6: Perform Seismic Analysis June 4, 2021

Phase 3

Task 7: Prepare Pre-Design Report (PDR)July 30, 2021

Task 8: Complete QA/QC of PDR.....August 6, 2021

Task 9: Submit PDR to City and DOHAugust 20, 2021

Phase 4 – Design Improvements To Be Determined

Phase 5 – Construction Management Services..... To Be Determined

EXHIBIT "B"

**ENGINEERING SERVICES
SCOPE AND ESTIMATED COST**

City of Yakima - 1st Level Reservoir Repairs and Improvements

Tasks	Principal Hours	Project Manager Hours	Project Engineer Hours	Civil Eng. Hours	Structural Eng. Hours	Engineer-In-Training Hours	AutoCAD/ GIS Tech./ Eng. Intern Hours	Professional Land Surveyor Hours	Field Survey (2 person) Hours
1 Project Management/Meetings	8	40	8	4	8				
Phase 1 - Prepare for Condition Assessment									
2 Review Background Information	1	4	2		2	2			
3 Distribution System Modeling	1	4	4	40					
4 Design/Bid/CA-Butterfly Valve Cut-In	1	10	40			40	40	8	10
Phase 2 - Condition Assessment									
5 Perform Field Condition Assessment									
<i>Roof Structural Inspection</i>	1	2			8	8	16		
<i>Slab Structural Inspection</i>	1	8			8	8			
<i>Ck. Reservoir Appurtenances - DOH</i>	1		8		4	4			
<i>Coordinate GPR/Review Results</i>		1			8	12			
<i>Coordinate CCTV/Review Results</i>		2	4			12			
6 Perform Seismic Analysis	1	2			24	32			
Phase 3 - Predesign Report									
7 Prepare Predesign Report	3	8	12		24	40	40		
8 QA/QC Internal and w/City Staff	6	6	6		6	6	6		
9 Submit Final Predesign Report	1	2	8		4	8	24		
Phase 4 - Design Improvements									
(To be determined by Amendment to Agreement)									
Phase 5 - Construction Management Services									
(To be determined by Amendment to Agreement)									
Hour Estimate:	25	89	92	44	96	172	126	8	10
Fully Burdened Billing Rate Range:*	\$138 to \$205	\$125 to \$205	\$119 to \$148	\$93 to \$135	\$110 to \$167	\$85 to \$135	\$50 to \$134	\$118 to \$155	\$171 to \$230
Estimated Fully Burdened Billing Rate:*	\$185	\$170	\$130	\$125	\$165	\$105	\$115	\$150	\$180
Fully Burdened Labor Cost:	\$4,625	\$15,130	\$11,960	\$5,500	\$15,840	\$18,060	\$14,490	\$1,200	\$1,800

Total Fully Burdened Labor Cost:	\$ 88,605
Direct Non-Salary Cost:	
Printing & Expenses	\$ 245
Subconsultant:	
PanGEO, Inc - (Geotechnical)	\$ 1,500
Subconsultant Overhead (10%)	\$ 150
TOTAL ESTIMATED COST:	\$ 90,500

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

EXHIBIT "C"

SCHEDULE OF RATES, YEARS 2020-2021

Description	Hourly Rate
Principal III	\$188.58
Principal II	\$168.08
Principal I	\$157.91
Project Manager	\$167.74
Structural Engineer	\$161.81
Project Engineer	\$145.56
Civil Engineer III	\$139.78
Civil Engineer II	\$101.66
Civil Engineer I	\$91.49
Engineer-In-Training	\$103.64
Electrical Engineer II	\$171.98
Electrical Engineer I	\$168.59
Environmental Technician	\$128.77
AutoCAD Technician IV	\$126.23
AutoCAD Technician III	\$93.36
AutoCAD Technician II	\$88.95
AutoCAD Technician I	\$77.09
Professional Land Surveyor	\$148.26
Field Surveyor II	\$88.11
Field Surveyor I	\$82.18
Construction Inspector	\$121.99
NOTE: Subconsultants will be identified on a task-by-task basis and will be invoiced at cost plus a 10% overhead fee.	