

<b>For City of Yakima Use Only:</b>	
Contract No.	_____
Project No.	_____
Resolution No.	_____
SOQ No.	_____

**AGREEMENT  
BETWEEN  
CITY OF YAKIMA, WASHINGTON  
AND  
INFRASTRUCTURE MANAGEMENT SERVICES, LLC  
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Yakima, Washington, a Washington municipal corporation with its principal office at 129 North Second Street, Yakima, WA 98901, hereinafter referred to as "CITY," and Infrastructure Management Services, LLC (IMS), with its principal office at 8380 S Kyrene Rd., #101, Tempe, AZ 85284, hereinafter referred to as "ENGINEER"; said consultant will provide engineering services under this AGREEMENT for the **2021 Pavement Condition Assessment** project on behalf of the City of Yakima, herein referred to as the "PROJECT."

**WITNESSETH:  
RECITALS**

WHEREAS, CITY desires to retain the ENGINEER to provide engineering services and staff support for developing 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, , Sadaf Khosravifar, PhD, PE, 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 - PROJECT SCOPE OF SERVICES (PROJECT) 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 Exhibits A and B 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 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 A – PROJECT SCOPE OF SERVICES, 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 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 duties and obligations under this AGREEMENT or by 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 therefrom.

### **SECTION 4 AUTHORIZATION, PROGRESS, AND COMPLETION**

4.1 In signing this AGREEMENT, CITY and ENGINEER agree that at such time as the CITY provides ENGINEER specific written authorization to proceed with one or more of the tasks described in EXHIBITS A and B, ENGINEER shall begin work. The time for completion of each task shall be as mutually agreed.

### **SECTION 5 COMPENSATION**

5.1 COMPENSATION ON A LUMP SUM BASIS: For the services described in Exhibit A (Tasks 1, 4, 8, and 9), compensation shall be paid per lump sum fee, according to those tasks and amounts identified in Exhibit B - Schedule of Fees, attached hereto and incorporated herein by this reference, on a percent completion basis. -The total maximum amount of compensation to the ENGINEER for identified lump sum tasks shall not exceed \$18,230.00 without the written agreement of the CITY and the ENGINEER.

COMPENSATION ON A UNIT BASIS AT SPECIFIC RATES: For the services described in Exhibit A (Tasks 2, 3, 5, 6, and 7), compensation shall be according to Exhibit B - Schedule of Fees, attached hereto and incorporated herein by this reference, on a unit basis for each specifically identified task. The

total maximum amount of compensation to the ENGINEER for identified unit basis tasks shall not exceed \$61,750.00 without the written agreement of the CITY and the ENGINEER.

- 5.2 Unless specifically authorized in writing by the CITY, the total budgetary amount for this PROJECT shall not exceed the amount set forth in Section 5.1 above. The ENGINEER shall make all reasonable efforts to complete each task within the budget established for that task, and will keep CITY informed of progress toward that end so that the budget 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 and approved of the additional costs prior to the time such costs were incurred.
- 5.3 The ENGINEER shall submit to the City's Representative an invoice bi-monthly for payment for PROJECT services completed through the accounting cut-off day of the previous invoice.. 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 identification of the work performed, a summary of tasks performed, percentage complete of lump sum tasks, and work performed on unit-based tasks, on the PROJECT for the current billing period, and any other supporting materials determined by the CITY necessary 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 (61) 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 written acceptance by CITY 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, 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, 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, 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 will 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 or 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 compliance by contractors 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.

## **SECTION 7 PROJECT SCHEDULE AND BUDGET**

7.1 The PROJECT schedule and performance dates for the individual tasks shall be mutually agreed to by the CITY and the ENGINEER. The performance dates and budgets for tasks may be modified only upon written agreement of the parties hereto. The performance date for tasks 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.

- 7.2 Not later than the tenth (10) 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 request of the CITY 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 service 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 ownership of any plans, drawings, 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 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, the Public Records Act, and practices consistently applied. The ENGINEER shall promptly furnish the CITY with such records which are related to the WORK of this AGREEMENT as may be requested by the CITY. 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 six (6) years after completion of the PROJECT, or for a longer period if required by law or by the Washington State Secretary of State's records retention schedule. 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.
- 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.

- 9.6 During the performance of the tasks assigned under this Agreement ENGINEER shall at all times maintain strict confidentiality with respect to all documents, materials, plans, and any other information belonging to the CITY that ENGINEER may have access to or observe while performing the tasks presented in this Agreement; further, ENGINEER shall not disclose any confidential CITY information that ENGINEER may have access to or come into contact with to any third parties whatsoever, at any time during the term of this Agreement; such prohibition shall be a continuing obligation that shall remain effective after the termination of this Agreement.
- 9.7 All records relating to ENGINEER'S work under this Agreement must be made available to the CITY, and the records relating to the WORK are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to ENGINEER's services and WORK under this Agreement must be retained by the ENGINEER for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- 9.8 The terms of Section 9 shall survive any expiration or termination of this Agreement.

## **SECTION 10 INSURANCE**

- 10.1 At all times during performance of 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 that stated below, as applicable. The CITY reserves the rights 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.

Subcontractors: If subcontractors will be used, the same terms and limits of coverage will apply, and a certificate will be required per the instructions above.

- 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 AGREEMENT 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 AGREEMENT. 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 AGREEMENT.

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 officers, employees, agents, and representatives there under. The CITY and the CITY'S elected and appointed officials, officers, principals, employees, representatives, volunteers 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 will subcontract with 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 of all disputes arising under this AGREEMENT shall be Yakima County, State of 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, or 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 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 AGREEMENT, 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  
                              Attn: Mr. Bill Preston, City Engineer  
                              129 N. 2<sup>nd</sup> Street  
                              Yakima, WA 98901

ENGINEER: IMS Infrastructure Management Services, LLC  
Attn: Derek Turner, Firm Principal  
8308 S Kyrene Rd., #101,  
Tempe, AZ 95284

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

INFRASTRUCTURE MANAGEMENT SERVICES, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Printed Name: Robert Harrison

Printed Name: \_\_\_\_\_

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 \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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 President of Infrastructure Management Services, LLC 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**

**PROJECT SCOPE OF SERVICES**

**CITY OF YAKIMA**

**DETAILED PROJECT SCOPE:**

<u>Task</u>	<u>Description</u>	<u>Activities</u>	<u>Deliverables</u>
<b>Base Service Items and Activities – Project Initiation</b>			
1.	Project Initiation	<ul style="list-style-type: none"> <li>Conduct kick off meeting confirming scope, extent and content of surveys, set milestones and deliverables.</li> <li>Confirm key contacts, roles and responsibilities and project documentation.</li> <li>Identify location of key data elements such as traffic data, GIS, existing roadway inventories, historical data, and pavement management data.</li> <li>Identify deficient data and the means to obtain it.</li> <li>Provide data QA plan to the City.</li> <li>Confirm phases of the work and invoicing methodology.</li> </ul>	Technical memo detailing scope of work, budget and deliverables.
2.	Network Referencing, Update & GIS Linkage	<ul style="list-style-type: none"> <li>Include street number &amp; block order in referencing.</li> <li>Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.</li> <li>Confirm length &amp; width via aerial photography.</li> <li>Create survey maps for use by the LCMS-2 and monitor production.</li> </ul>	Survey maps and inventory for use on the project. Inventory spreadsheet containing all assigned GIS ID's
3.	Network Inventory Checks & Survey Map Development	<ul style="list-style-type: none"> <li>Using the City's new GIS centerline topology, develop a network roadway inventory suitable for use in the Easy Street Analysis (ESA) Pavement Management system.</li> <li>Link each segment to its parent GIS section.</li> <li>Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.</li> <li>Develop exceptions report for lengths that don't match GIS.</li> </ul> <p>Complete a review of the aerial photography of the City to confirm segment street names widths, lengths, and average slab dimensions.</p>	Programmed survey maps and inventory for use on the project.

**Base Service Items and Activities – Field Surveys**

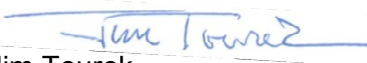
4.	LCMS-2 Mobilization/ Calibration	<ul style="list-style-type: none"> <li>Mobilize surface distress, roughness, and rutting testing equipment to project.</li> <li>Crew to review the survey maps with the City.</li> <li>Demonstrate the equipment to the City.</li> <li>Calibrate equipment.</li> </ul>	Equipment calibration results
5.	LCMS-2 Field Data Collection w/Lasers (Pavement Condition)	<ul style="list-style-type: none"> <li>Collect ASTM D-6433 distresses and attributes at 100-foot intervals on a delivered in block-to-block segmentation basis. IMS will survey approximately 400 centerline miles, 2-pass testing of Major roads and 1-pass of local roadways for a survey total of an estimated 475 test miles.</li> <li>Expansion of distresses to include longitudinal, transverse, alligator, and block cracking, raveling, bleeding, patches/potholes, rutting, roughness, and distortions.</li> <li>Laser Crack Measurement System, v2 (LCMS-2) will incorporate the use of lasers and rate gyroscopes, digital images, touch screen event board, and GPS acquisition.</li> <li>Dual wheel path testing collecting International Roughness Index (IRI) data at no additional charge.</li> </ul>	Complete two passes of major roadways; single-pass on local network. Approximately 475 test miles.
6.	Collect and Deliver Digital Images (15' Intervals)	<ul style="list-style-type: none"> <li>Process 1-view (center front) of RST video into 15' intervals.</li> <li>Link images to the City's existing GIS centerline.</li> <li>Provide viewing tool for a virtual drive experience.</li> </ul>	1-view of front imagery at 15' intervals. Deliver w/GPS coordinate data.

<u>Task</u>	<u>Description</u>	<u>Activities</u>	<u>Deliverables</u>
<b>Base Service Items and Activities – Data Management</b>			
7.	Pavement Condition Data QA/QC, Processing & Formatting	<ul style="list-style-type: none"> <li>For each data stream (surface distress, roughness, GPS, deflection), aggregate and process the data at 100-foot intervals.</li> <li>Develop individual index scores for surface distress and roughness as appropriate.</li> <li>Develop structural index for each roadway segment.</li> <li>Develop a pavement condition score for each section.</li> <li>Process the same data to the segment level.</li> <li>Develop exceptions report: lengths not matching GIS.</li> <li>Complete QA of data.</li> </ul>	<p>Excel spreadsheet of the 100 foot, sectional data, and index values containing all assigned GIS ID's.</p> <p>Shapefiles of the condition data at the 100 foot and segment levels.</p>
8.	Easy Street Pavement Analysis, Budget Development & Report	<ul style="list-style-type: none"> <li>The spreadsheet has the ability to prioritize and optimize the multi-year plan.</li> <li>It will be programmed to develop a multi-year maintenance and rehabilitation plan using "cost of deferral".</li> <li>It will also have referenced deterioration curves for each functional classification, pavement type, and even pavement strength rating.</li> <li>The parameters of the analysis (Priority Weighting Factors) can also be modified and reprioritized on the fly.</li> <li>Shapefiles &amp; KML file of the processed data.</li> <li>Cost Benefit Analysis &amp; Spreadsheet Training</li> <li>Ongoing Easy Street Analysis Spreadsheet Annual Maintenance Fee</li> </ul>	<p>"Easy Street" Analysis spreadsheet with "Hot" cells (highlighted in yellow) that City can use to generate differing budget scenarios.</p> <p>Shapefiles &amp; KML file of the processed data along with Cost Benefit Analysis &amp; Spreadsheet Training.</p> <p>Delivery of draft analysis and report as outlined.</p> <p>Final report and shape files – both hard copies (3) and in native, electronic format.</p>
9.	Project Management	<ul style="list-style-type: none"> <li>Provide client with periodic e-mail updates and reports.</li> <li>Meetings to be completed virtually and by conference calls.</li> <li>Complete project administration and invoicing.</li> </ul>	<p>Status reports and invoices.</p>

Thank you for considering IMS as a viable solution to your pavement management needs and we will strive to remain an asset and extension of the City of Yakima's staff and team. If any questions arise please do not hesitate to contact me at (480) 462-4030 or [jtourek@imsanalysis.com](mailto:jtourek@imsanalysis.com).

Regards,

**IMS Infrastructure Management Services, LLC**

  
 Jim Tourek  
 West Region Client Services

**EXHIBIT B**  
**SCHEDULE OF FEES**

**City of Yakima, WA: 2021-22 Base Scope of Services**

<b>Task</b>	<b>Activity</b>	<b>Quant</b>	<b>Units</b>	<b>Unit Rate</b>	<b>Total</b>
<b>Project Initiation</b>					
1	Project Initiation & Set-up	1	LS	\$3,000.00	\$3,000.00
2	Network Referencing & GIS Linkage	475	T-Mi	\$5.00	\$2,375.00
3	Network Inventory Checks & Survey Map Development	475	T-Mi	\$3.00	\$1,425.00
<b>Field Surveys</b>					
4	Mobilization & Calibration	1	LS	\$3,000.00	\$3,000.00
5	LCMS-2 Field Data Collection (2-pass Arterials; Collectors & Locals 1-pass)	475	T-Mi	\$100.00	\$47,500.00
6	Collection of Digital Images at 15' Intervals (Deliver 1-Forward View)	475	T-Mi	\$10.00	\$4,750.00
<b>Data Management</b>					
7	Data QA/QC, Processing, & Formatting	475	T-Mi	\$12.00	\$5,700.00
8	Pavement "Easy Street" Analysis, Budget Development & Report	1	LS	7,500.00	\$7,500.00
	a. "ESA" - Easy Street Analysis Pavement Management Spreadsheet Software			Included in Base Activities	
	b. Customizable Prioritization & Cost-Benefit Analysis			Included in Base Activities	
	c. Online ESA Spreadsheet Training			Included in Base Activities	
	d. "Easy Street" Spreadsheet - License & Ongoing Maintenance Fee	1	LS	\$0.00	\$0.00
9	Project Management	1	LS	\$4,730.00	\$4,730.00
<b>Project Total:</b>					<b>\$79,980.00</b>