

**AGREEMENT
BETWEEN
CITY OF YAKIMA, WASHINGTON
AND

FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into on this _____ day of _____, 2023, 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 **H.W. Lochner, Inc** with its principal office at **915 118th Avenue SE, Suite 130 Bellevue, WA 98005**, (hereinafter referred to as "ENGINEER"); said corporation being licensed and registered to do business in the State of Washington, and will provide **engineering** services under this Agreement for **Bravo Company Boulevard** on behalf of the City of Yakima, Project No. **2337**, 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, **Aaron Butters** 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 "**Bravo Company Boulevard Design Scope of Services**" (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 TERM

31. The term for this AGREEMENT shall be from the date of signature of both parties through December 31, 2023.

SECTION 4 CITY'S RESPONSIBILITIES

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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 5 AUTHORIZATION, PROGRESS, AND COMPLETION

- 5.1 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 EXHIBIT A, ENGINEER shall begin work. The time for completion of each task shall be as mutually agreed.

SECTION 6 COMPENSATION

- 6.1 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.

- 6.1.1 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.

- 6.1.1.1 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.

- 6.1.2 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.

- 6.1.3 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.

- 6.2 Unless specifically authorized in writing by the CITY, the total budgetary amount for this PROJECT shall not exceed **Two Hundred Fifty Seven Thousand, One Hundred Seventy Six Dollars (\$257,176)**. 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.
- 6.3 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.
- 6.4 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).
- 6.5 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.
- 6.6 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 7 RESPONSIBILITY OF ENGINEER

- 7.1 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.
- 7.2 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.

- 7.3 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.

7.4 INDEMNIFICATION AND HOLD HARMLESS:

- 7.4.1 ENGINEER shall take all necessary precautions in performing the WORK to prevent injury to persons or property. The ENGINEER agrees to release, indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of the ENGINEER, or any of ENGINEER's agent(s) or subcontractor(s), in performance of this Agreement, except for claims caused by the City's sole negligence.
- 7.4.2 **Industrial Insurance Act Waiver.** It is specifically and expressly understood that the ENGINEER waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. ENGINEER's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. ENGINEER shall require that its subcontractors, and anyone directly or indirectly employed or hired by ENGINEER, and anyone for whose acts ENGINEER may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.
- 7.4.3 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the ENGINEER and the City, the ENGINEER's liability, including the duty and cost to defend, shall be only to the extent of the ENGINEER's negligence.
- 7.4.4 Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.
- 7.4.5 The terms of this Section shall survive any expiration or termination of this Agreement.
- 7.5 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.

- 7.6 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.
- 7.7 ENGINEER shall be solely responsible for and shall pay all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury insurance, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, ENGINEER shall pay the same before it becomes due.
- 7.8 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 8 PROJECT SCHEDULE AND BUDGET

- 8.1 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.
- 8.2 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 9 REUSE OF DOCUMENTS

- 9.1 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.

- 9.2 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.
- 9.3 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 10 AUDIT AND ACCESS TO RECORDS

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 The ENGINEER shall ensure that the foregoing paragraphs are included in each subcontract for WORK on the Project.
- 10.5 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 11 INSURANCE

- 11.1 At all times during performance of the WORK or obligations under this Agreement, 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. Failure by the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of ENGINEER's obligation to maintain such insurance. ENGINEER's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the ENGINEER's insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by ENGINEER's insurance.

11.1.1 **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.

11.1.2. **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.

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

11.1.4. **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.

- 11.2 If at any time during the life of the Agreement, or any extension, ENGINEER fails to maintain the required insurance in full force and effect, all work under the Agreement shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the Agreement.

SECTION 12 SUBCONTRACTS

- 12.1 ENGINEER shall be entitled, to the extent determined appropriate by ENGINEER, to subcontract any portion of the WORK to be performed under this Agreement. However, ENGINEER shall be considered the Prime Contractor hereunder and shall be the sole point of contact with regard to all contractual matters arising hereunder, including the performance of WORK and payment of any and all charges resulting from contractual obligations.
- 12.2 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.
- 12.3 CITY does not anticipate ENGINEER subcontracting with any additional persons or firms for the purpose of completing this Agreement.
- 12.4 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.
- 12.5 If dissatisfied with the background, performance, and/or general methodologies of any subcontractor, the City may request in writing that the subcontractor be removed. The ENGINEER shall comply with this request at once and shall not employ the subcontractor for any further WORK under this Agreement.

SECTION 13 ASSIGNMENT

- 13.1 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. The ENGINEER for itself and its heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all of the covenants herein contained upon the part of the ENGINEER. 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 14 INTEGRATION

- 14.1 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 15 JURISDICTION AND VENUE

- 15.1 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 16 EQUAL EMPLOYMENT and NONDISCRIMINATION

- 16.1 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 17 SUSPENSION OF WORK

- 17.1 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 18 TERMINATION OF WORK

- 18.1 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.
- 18.2 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.

- 18.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.
- 18.8 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 19 DISPUTE RESOLUTION

- 19.1 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 20 NOTICE

- 20.1 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
129 N 2nd Street
Yakima, WA 98901
Attn: Bill Preston

ENGINEER: H.W. Lochner, Inc
915 118th Avenue SE, Suite 130
Bellevue, WA 98005
Attn: Aaron Butters

SECTION 21 INSPECTION AND PRODUCTION OF RECORDS

- 21.1 All records in all formats relating to the WORK shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve ENGINEER of responsibility for performance of the WORK in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. ENGINEER shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. ENGINEER's records relating to the WORK will be provided to the City upon the City's request.
- 21.2 ENGINEER shall promptly furnish the City with such information and records which are related to the WORK of this Agreement as may be requested by the City. Until the expiration of six (6) years after final payment of the compensation payable under this Agreement, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, ENGINEER shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of ENGINEER's books, documents, papers and records which are related to the WORK performed by ENGINEER under this Agreement. Prior to converting any paper records to electronic format and/or destroying any records, ENGINEER shall contact CITY's Records Administrator (509-575-6037) to discuss retention. In no event shall any record relating to the WORK be destroyed without CITY consultation.
- 21.3 All records relating to ENGINEER's services 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 under this Agreement must be retained by ENGINEER for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- 21.4 The terms of this section shall survive any expiration or termination of this Agreement.

SECTION 22 COMPLIANCE WITH THE LAW

- 22.1 ENGINEER agrees to perform all WORK under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise, including policies adopted by the City, as those laws, ordinances, rules, regulations, and policies now exist or may hereafter be amended or enacted. ENGINEER shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.

- 22.2 ENGINEER shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.
- 22.2.1 Procurement of a City Business License. ENGINEER must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
- 22.2.2 ENGINEER must provide proof of a valid Washington department of Revenue state excise tax registration number, as required in Title 85 RCW.
- 22.2.3 ENGINEER must provide proof of a valid Washington Unified Business Identification (UBI) number. ENGINEER must have a current UBI number and not be disqualified from bidding on any public works contract under RCW 39.06.101 or 36.12.065(3).
- 22.2.4 ENGINEER must provide proof of a valid Washington Employment Security Department number as required by Title 50 RCW.
- 22.2.5 Foreign (Non-Washington) Corporations: Although the City does not require foreign corporate proposers to qualify in the City, County or State prior to submitting a proposal, it is specifically understood and agreed that any such corporation will promptly take all necessary measures to become authorized to conduct business in the City of Yakima, at their own expense, without regard to whether such corporation is actually awarded the contract, and in the event that the award is made, prior to conducting any business in the City.

SECTION 23 MISCELLANEOUS PROVISIONS

- 23.1 Nondiscrimination. During the performance of this Agreement, the ENGINEER agrees as follows: The ENGINEER shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, pregnancy, veteran's status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq.). 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 WORK under this Agreement. In the event of the ENGINEER's noncompliance with the non-discrimination clause of this contract or with any such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the ENGINEER may be declared ineligible for any future City contracts.
- 23.2 Pay transparency nondiscrimination. The ENGINEER will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.
- 23.3 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

- 23.4 Agreement documents. This Agreement, the Request for Qualifications & Proposals No. **N/A**, titled **N/A** Scope of Work, conditions, addenda, and modifications and ENGINEER's proposal (to the extent consistent with Yakima City documents) constitute the Agreement Documents and are complementary. Specific Federal and State laws and the terms of this Agreement, in that order respectively, supersede other inconsistent provisions. These Agreement Documents are on file in the Office of the Purchasing Manager, 129 No. 2nd St., Yakima, WA, 98901, and are hereby incorporated by reference into this Agreement.
- 23.5 Notice of change in financial condition. If, during this Agreement, the ENGINEER experiences a change in its financial condition that may affect its ability to perform under the Agreement, or experiences a change of ownership or control, the ENGINEER shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change of ownership or control shall be sufficient grounds for termination.
- 23.6 No conflicts of interest. ENGINEER represents that it or its employees do not have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. ENGINEER further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Agreement.
- 23.7 Promotional advertising prohibited. Reference to or use of the City, any of its departments, agencies or other subunits, or any official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast emails pertaining to this procurement shall not be made without prior written authorization of the City.
- 23.8 Time is of the essence. Timely provision of the WORK required under this Agreement shall be of the essence of the Agreement, including the provision of the WORK within the time agreed or on a date specified herein.
- 23.9 Waiver of breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.
- 23.10 Force Majeure. ENGINEER will not be responsible for delays in delivery due to acts of God, fire, strikes, riots, delay in transportation, or those effects of epidemics or pandemics that could not have been reasonably anticipated or mitigated through acts of the ENGINEER; provided ENGINEER notifies the City immediately in writing of such pending or actual delay. Normally in the event of such delays, the date of delivery of WORK will be extended for a period of time equal to the time lost due to the reason for delay.
- 23.11 Authority. The person executing this Agreement on behalf of ENGINEER represents and warrants that they have been fully authorized by ENGINEER to execute this Agreement on its behalf and to legally bind ENGINEER to all terms, performances, and provisions of this Agreement.

23.12 Survival. The foregoing sections of this Agreement, inclusive, shall survive the expiration or termination of this Agreement, in accordance with their terms.

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

CITY OF YAKIMA

XXXXXXXXXXXXXXXXXX

Bob Harrison

Signature

Printed Name:_____

Printed Name:_____.

Title: City Manager

Title:_____

Date:_____

Date:_____

Attest _____
City Clerk

Resolution: R-2023- _____

Contract 2023- _____

STATE OF WASHINGTON

)

) ss.

COUNTY OF YAKIMA

)

I certify that I know or have satisfactory evidence that Bob 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 YAKIMA

)

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

Dated: _____

Seal or Stamp

(Signature)

Title

Printed Name

My commission expires: _____

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
Professional Fees

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EXHIBIT "C"

SCHEDULE OF RATES