



Capital Agreement with

City of Yakima

through the

Community Economic Revitalization Board

For

Business Incubator, Commercial Kitchen,
and Public Market Real Estate Valuation Study

Start date: Date of last signature



Department of Commerce
Innovation is in our nature.

Washington State Department of Commerce
www.commerce.wa.gov

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**Washington State Department of Commerce
Community Economic Revitalization Board**

1. Contractor City of Yakima 129 North Second Street Yakima, WA 98901		2. Contractor Doing Business As N/A	
3. Contractor Representative Sean Hawkins Economic Development Manager (509) 575-6274 Sean.Hawkins@yakimawa.gov		4. CERB Representative Janéa Eddy CERB Program Manager 360.725.3151 360.664.3029 fax Janea.Eddy@commerce.wa.gov P.O. Box 42525 Olympia, WA 98504-2525	
5. Contract Amount \$50,000	6. Funding Source Federal: ☐ State: ☒ Other: ☐ N/A: ☐		7. Start Date Date of Last Signature
8. End Date Two years from the date of Last Signature			
9. Federal Funds (as applicable) N/A		10. Federal Agency N/A	
CFDA Number: N/A			
10. Tax ID # 91-6001293	11. SWV # SWV0007122-02	12. UBI #	13. DUNS #
14. Contract Purpose A feasibility study to refine the concept of a Public Market and Mixed-Use Incubator/Commercial Kitchen; including final location selection, layout, conceptual drawings, and estimated construction budget.			
- CERB, defined as Community Economic Revitalization Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Signed Certification Page of Application Form, Attachment "D" – Initial Offer of Financial Aid, Attachment "E" – Pre-Contract Requirements, Attachment "F" – Planning Study Minimum Requirements. - This Contract shall be approved by the Contractor through its governing body and signed by the official representative of that body and returned to CERB by ~~August 1, 2017~~ SEPT 7/2017			
FOR THE CONTRACTOR ~~Jeff Cutter, Acting City Manager~~ CLIFF MOORE City of Yakima CITY MANAGER Date		FOR CERB David Rhoden, Chair Community Economic Revitalization Board Date APPROVED AS TO FORM ONLY Sandra Adix Assistant Attorney General 06/19/2017 Date	

PROJECT SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS

1. BILLING PROCEDURES AND PAYMENT

CERB will reimburse Contractor upon receipt and acceptance of properly completed state voucher form and a recap of expenditures form, which shall be submitted to the Representative of CERB not more often than monthly.

The Contractor must submit to CERB a properly completed A-19 form, with all necessary backup documentation. The request must be signed by an official of the Contractor's organization who has the signature authority to submit such requests.

The request for reimbursement must include backup documentation to substantiate the payment being requested. The Contractor must include documentation of material receipts for eligible goods and services.

All requests for reimbursement shall describe and document, to CERB's satisfaction, a description of the work performed, the progress of the project, and reimbursable costs. Requests for reimbursement shall include the contract reference number S16-790A0-106.

Payment shall be considered timely if made by CERB within thirty (30) calendar days after receipt of properly completed and documented requests for reimbursement. Payment shall be sent to the address designated by the Contractor.

CERB may, in its sole discretion, terminate the contract or withhold reimbursement if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of the scope of work to be completed under this contract shall be made by CERB.

Total funds disbursed shall not exceed actual amounts required for the project described or the amount of the CERB award, whichever is the lesser. All funds other than CERB's must be disbursed prior to CERB funds, except where required on a matching basis by other federal or state programs. If a combination loan and grant is approved, under no circumstances will payment be made from the grant portion prior to disbursement of funds from the loan portion. CERB will not recognize any requests for project costs overruns. No payments will be made except as expressly provided herein.

CERB shall withhold ten (10) percent of the total funding award until project completion and acceptance by CERB of the final Project Completion Report.

Duplication of Billed Costs

The Contractor shall not bill CERB for work under this Agreement, and CERB shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Access to Work and Records

All property, facilities, and records developed pursuant to this agreement shall be available for inspection upon request during regular business hours by CERB or its authorized representative. All records supporting every request for payment shall be maintained in a manner which will provide an audit trail to the expenditures. Copies of records shall be furnished to CERB immediately upon request. This paragraph shall be included in any and all subcontracts let by the Contractor under this agreement.

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representatives for CERB and the Contractor and their respective contact information, are identified on the Face Sheet of this Contract.

**PROJECT SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

3. CONTRACT PERIOD

- A. The effective date of this Contract is the date of last signature.
- B. Costs to be reimbursed by CERB under this Contract are those eligible costs incurred during the performance of the Contract work specified in Attachment "A" on or after **November 17, 2016**, the date of the Initial Offer of Financial Aid, as specified in Attachment "D."

4. HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 05-05 "Archaeological and Cultural Resources", effective November 10, 2005. To the extent that Executive Order 05-05 may apply to a project approved by CERB, the Contractor will cooperate with CERB to undertake necessary compliance under the Order. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Contractor shall immediately stop construction, make a reasonable effort to protect the area from further disturbance, notify the local or Tribal historical preservation office, as appropriate, and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. In the event that human remains or suspected human remains are discovered at the Project site during construction or rehabilitation Contractor shall immediately stop construction and shall immediately cease any activity which may cause further disturbance, make a reasonable effort to protect the area from further disturbance, and report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible.

5. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect CERB should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, CERB, and its agents, officers, and employees as additional insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give CERB thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Contractor shall submit to CERB within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

PROJECT SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name CERB as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C. The Contractor shall provide, at CERB's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that CERB will be provided thirty (30) days advance written notice of cancellation.

SELF-INSURED CONTRACTORS ONLY

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from CERB, the Contractor may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from CERB, the Contractor shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Contractor's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Contractor shall provide annually to CERB a summary of coverages and a letter of self insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

Additional Provisions:

Excess Coverage. By requiring insurance herein, CERB does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to CERB in this Agreement.

Unemployment and Industrial Insurance. The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this contract. CERB will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this contract.

Protection of Project Property, Contractor's Assumption of Risk.

The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage and vandalism insurance or all-risk insurance to cover the project work during the course of construction.

The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

**PROJECT SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

6. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Project Special Terms and Conditions
- Program Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Signed Certification Page of Application Form
- Attachment D – Initial Offer of Financial Aid
- Attachment E – Pre-Contract Requirements

7. REIMBURSEMENT

CERB shall reimburse Contractor in an amount not to exceed **\$50,000** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's reimbursement shall be in accordance with the terms of this agreement.

If funding or appropriation is not available at the time the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the scope of work.

The Board will pay the Contractor after the Contractor has completed the work described in this Contract and the Contractor has sent the Board properly completed invoices. Invoices shall be submitted to the Board not more often than monthly.

Payment shall be considered timely if made by the Board within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, terminate the contract or withhold reimbursement if the Contractor fails to satisfactorily comply with any term or condition of this contract.

The Board will make no payments in advance or in anticipation of completion of work described in this Contract.

Total amounts paid under this Contract shall be the lesser of actual amounts required for the work described in this Contract or the amount of the Board award.

Twenty five percent (25%) of matching funds for the public project must be spent prior to drawing Board funds. Subsequently, matching funds must be spent in concert with the CERB award, dollar for dollar (\$1 CERB award to \$1 matching funds) until the CERB award or matching funds are exhausted.

The Board shall withhold ten percent (10%) of the total funding award until project completion and acceptance of the final Project Completion Report by the Board.

**PROGRAM SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

1. DEFINITIONS

- A. "Initial Offer of Financial Aid" shall mean the written offer of financial assistance offered by CERB and accepted by the Contractor.
- B. "Project" shall mean the project approved for funding by CERB, as described in Attachment "A" – Scope of Work.
- C. "Project Completion Report" shall mean the report provided by CERB to the Contractor to be submitted upon the completion of the CERB-funded project.

2. COPYRIGHT PROVISIONS

Notwithstanding the provisions of General Term and Condition 13, COPYRIGHT PROVISIONS, of this contract, the Contractor has ownership rights in all data and blueprints that the Contractor produces under this contract, subject to the CERB right to royalty free use of these materials.

3. INTEREST ON CERB FUNDS

In those cases where funds have been disbursed by CERB, and the funds are not expended within thirty (30) days due to other circumstances, the Contractor shall owe the interest on all unexpended funds past thirty (30) days. All interest accruing on such funds shall inure to the benefit of CERB. Interest shall accrue at the same rate that the funds would have earned in the CERB Account held by the State Treasury Department.

4. NOTICE

All notices, demands, requests, consents, approvals, and other communication which may be or are required to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

- a) Notice to CERB:
Washington State Department of Commerce
Community Economic Revitalization Board (CERB)
1011 Plum St SE
P.O. Box 42525
Olympia, WA 98504-2525
- b) Notice to Contractor:
Sean Hawkins
Economic Development Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

or to such other official or addresses the Contractor shall have furnished to CERB in writing.

5. PERFORMANCE REPORTING

The Contractor shall submit progress reports as required by CERB. The Contractor shall also report, in writing any problems, delays, or adverse conditions which will materially affect the ability to meet project objectives, time schedules, or work units by the established time period. This disclosure shall be accompanied by a statement of the action taken or contemplated and any CERB assistance needed to resolve the situation.

Upon final request for reimbursement, the Contractor shall submit a Project Completion Report to CERB, signed by the Contractor's responsible party, which shall include, but not be limited to, an accounting of all expenditures, a description of work accomplished, further refinement of private sector permanent employment impacts, etc. (format to be provided by CERB).

PROGRAM SPECIAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS

After submission of the Project Completion Report, the Contractor shall continue, for up to five years or as may be required by CERB, to provide updates on the economic impact of the project. The updates shall be in a format acceptable to CERB and describe, but not be limited to:

- Number and types of businesses assisted by the project
- Private sector employment and private investment activity resulting from the project
- Wages and health benefits associated with the private sector employment
- Amount of state funds and total capital invested in the project
- Local fund match and local participation in the project
- Transportation infrastructure available for the completed project

6. PROJECT COMPLETION

The project shall be completed within two (2) years from the date of contract execution, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

If at any time during the term of this agreement CERB determines that project performance is unsatisfactory, including, but not limited to: (a) defective work not remedied, or (b) a reasonable doubt that the Contract can be completed for the balance then unpaid, CERB reserves the right to withhold payments until the problem is remedied or to exercise its rights of termination under General Terms and Conditions 40 and 41 of this agreement.

7. PROJECT PERFORMANCE

The Contractor's performance shall commence within six months after execution of the Final Contract, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to "Special Conditions".

If at any time during the term of this agreement CERB determines that project performance is unsatisfactory, including, but not limited to: (a) defective work not remedied, or (b) a reasonable doubt that the Contract can be completed for the balance then unpaid, CERB reserves the right to withhold payments until the problem is remedied or to exercise its rights of termination under Articles 40 and 41 of this agreement.

8. RESTRICTIONS ON CONVERSION OF FACILITY TO OTHER USES

The Contractor shall not convert any property or facility acquired or developed pursuant to this agreement to uses other than those for which CERB assistance was originally approved for a period of 10 years without the prior written approval of CERB. If CERB no longer exists at the time of the proposed conversion, such written approval must be obtained from the Governor's Office, or from an agency designated by the Governor's Office.

In the event that the Contractor converts any such property or facility to an unapproved use, the Contractor shall pay to CERB all funds disbursed under this contract with interest in full upon demand.

9. SUBCONTRACTING

Notwithstanding the provisions of General Term and Condition 37, SUBCONTRACTING, of this contract, the term "Contracting" shall not refer to subcontracting of the actual planning project

**GENERAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Community Economic Revitalization Board, as authorized under RCW 43.160.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures up to the maximum amount stated on the Contract Declarations Page or Amendment Face Sheet.

3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. APPROVAL

This contract shall be subject to the written approval of the Board as evidenced by the signature of the Board's authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and cost.

**GENERAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

9. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the Board requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name,
- BARS account number
- Grantor
- Agency contract number
- Contract award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

C. Documentation Requirements

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 1011 Plum St SE
- PO Box 42525
- Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required.

**GENERAL TERMS AND CONDITIONS
CAPITAL-RELATED
STATE FUNDS**

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
2. All material produced by the Contractor that is designated as "confidential" by the Board; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

12. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Board. The Board shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Board effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.

"Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

The Contractor shall exert all reasonable effort to advise the Board, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Board with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Board shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

**GENERAL TERMS AND CONDITIONS
CAPITAL-RELATED
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14. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the Board, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and,
- be mailed to the Chair and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

16. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

17. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

18. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the Board, all other agencies of the State and all officers, agents and employees of the State, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

**GENERAL TERMS AND CONDITIONS
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Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, the Board, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officers, agents or employees.

20. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties acknowledge and agree that the Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the Board. The Contractor will not hold itself out as or claim to be an officer or employee of the Board or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Board may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Board may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Board under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

22. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, Section 41.06.020 (11) RCW.
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, Section 4.24.264 RCW.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.

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- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

23. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

24. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract on behalf of the Board.

25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

28. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the Board's name is mentioned, or language used from which the connection with the state of Washington's or the Board's name may reasonably be inferred or implied, without the prior written consent of the Board.

**GENERAL TERMS AND CONDITIONS
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31. RECAPTURE

In the event that the Contractor fails to perform the work or otherwise carry out its duties under this contract in accordance with state laws, federal laws, and/or the provisions of this contract, the Board reserves the right to recapture funds in an amount to compensate the Board for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Board. In the alternative, the Board may recapture such funds from payments due under this contract, if any.

32. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Board, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Board may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

36. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

37. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Board.

If the Board approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Board in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

**GENERAL TERMS AND CONDITIONS
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Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Board and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

40. TERMINATION FOR CAUSE / SUSPENSION

In event the Board determines that the Contractor failed to comply with any term or condition of this Contract, the Board may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the Board upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Board may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Board to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the Board determines that the Contractor did not fail to comply with the terms of the Contract or when the Board determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law.

41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract the Board may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

42. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by the Board, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Upon termination of the Contract, the Board shall pay the Contractor for any reimbursable expenses incurred prior to the date of termination, provided a properly submitted and documented request for reimbursement is timely submitted. The Board may withhold any amount due as the Board reasonably determines is necessary to protect the Board against potential loss or liability resulting from the termination. The Board shall pay any withheld amount to the Contractor if the Board later determines that loss or liability will not occur.

The rights and remedies of the Board under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

**GENERAL TERMS AND CONDITIONS
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43. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the Board.

Scope of Work

Contractor: City of Yakima

Summary: Business Incubator, Commercial Kitchen, and Public Market Real Estate Valuation Study

Activities: (All activities will be completed no later than 2 years from contract execution.)

The scope of work includes:

- 1. Location Selection: Working with the project's oversight committee, the firm will assist the City in determining the two final locations for evaluation using the recommended locations in the City's feasibility study as a guide to start. Other locations will be determined by the Council Economic Development Committee.***
- 2. Design/Layout: Once the two final locations are determined, complete conceptual project layouts for both locations, including evaluation of all necessary infrastructure conditions and needs.***
- 3. Conceptual Drawings: Engineer will generate conceptual drawings of the interior and exterior of the two locations to generate public interest in the project. A minimum of 6 promotional drawings must be completed for each option.***
- 4. Estimated Construction Budget: Once the final layouts, building needs, and infrastructure have been evaluated, the firm will produce a final estimated construction budget for the final two locations.***
- 4. CERB minimum requirements listed on Attachment F***

Deliverables:

- Copy of the completed study funded under this agreement.
- Final Project Report. Report format to be provided by CERB.
- Progress Reports.

Progress reports will be submitted on a quarterly schedule to CERB. The following dates establish this reporting schedule:

- October 15, 2017
- January 15, 2018
- April 15, 2018
- July 15, 2018
- October 15, 2018
- January 15, 2019
- April 15, 2019
- July 15, 2019

Budget

- A. CERB Award
- Grant of \$50,000

B. Budget

The budget shall consist of the following elements:

	CERB Award	Other Funds	Total
1. Feasibility Study	\$50,000	\$16,667	\$66,667
TOTAL	\$50,000	\$16,667	\$66,667

Special Budget Provisions:

A total amount of transfers of funds between line item budget categories in this Contract shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a Contract amendment by the Contractor and CERB.

A sum of ten (10) percent of CERB funds shall be withheld until all activities and final products defined in Attachment "A" have been successfully completed by the Contractor and accepted fully by CERB.

Signed Certification Page of Application Form

RESOLUTION NO. R-2016-112

A RESOLUTION authorizing the City Manager to apply for Community Economic Revitalization Board (CERB) Planning Grant funds to evaluate real estate options for Yakima Business Incubator and Public Market.

WHEREAS, the City of Yakima is committed to assisting entrepreneurs start businesses within the City and lowering barriers to provide for a variety of businesses and opportunities for its residents; and

WHEREAS, increasing opportunities for businesses in Yakima can be a catalyst for job growth and long term economic prosperity for residents and the City, and

WHEREAS, the City has evaluated many ideas regarding economic development in the City and, as part of its analysis, completed a Public Market business concept study which determined that a Public Market is a feasible project in Yakima, with estimated sales between \$4 2 million and \$6.5 million annually, and

WHEREAS, a Public Market would allow small businesses, entrepreneurs and other residents to start businesses without the need for expending funds on traditional brick and mortar establishments, decreasing start-up costs and increasing their ability to succeed, promoting further growth in the economy; and

WHEREAS, to help further the Public Market concept, the City is interested in pursuing a Community and Economic Revitalization Board (CERB) planning grant to evaluate two real estate opportunities in the City for the construction of a Public Market, or other similar business incubator project; and

WHEREAS, the City is committed to providing a 25% local match as required by CERB; and

WHEREAS, the City Council of the City of Yakima finds that it is in the best interests of its residents to attempt to obtain planning grant funds to further evaluate real estate opportunities for a Public Market, or other similar business incubator project, to open up additional business opportunities to residents and facilitate economic growth in Yakima, now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized and directed to submit a grant application to the State of Washington's CERB Program for planning costs and expenses associated with a Public Market business concept which could provide a unique and additional economic development opportunity for the City of Yakima, which, if awarded, will be brought back to the City Council for approval of the grant, now, therefore,

ADOPTED BY THE CITY COUNCIL this 20th day of September, 2016.

ATTEST:


Sonya Claar Tee, City Clerk




Kathy Coffey, Mayor

Initial Offer of Financial Aid

Washington State
Community Economic Revitalization Board

Initial Offer of Financial Aid

City of Yakima
Federal Tax Number: 91-6001293
Offer Date: November 17, 2016

The Community Economic Revitalization Board (CERB) is authorized by chapter 43.160 RCW to provide funds to political subdivisions to assist in financing the cost of certain public facilities. This Initial Offer of Financial Aid is contingent upon the availability of CERB funds. CERB hereby offers to make funds available to the **City of Yakima**, hereafter referred to as the "Contractor," in order to aid in financing the cost of, **Business Incubator, Commercial Kitchen, Public Market Real Estate Valuation Study**, as described in the application (hereafter collectively referred to as the "Project").

Funds provided shall be in the form of a **grant** in the maximum principal amount of **\$50,000**, which must have a local **cash** match in the amount of at least **\$16,667**. Local cash match amounts and sources are identified as:

\$16,667	City of Yakima	Cash
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This offer is subject to completion of pre-contract conditions, as described in Attachment A.

A final contract shall be developed by CERB prior to disbursement of funds. No project costs incurred prior to date of this offer will be reimbursed by CERB. In the event a final contract is not executed, no CERB funds will be disbursed.

If accepted, this Initial Offer of Financial Aid must be signed and returned to CERB by **December 28, 2016**.

ACCEPTANCE

FOR CERB

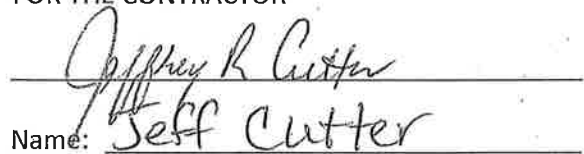


David Rhoden, Chair
Community Economic Revitalization Board

Date:

1/2/17

FOR THE CONTRACTOR



Name:

Title:

Date:

Acting City Manager

12/20/16

Pre-Contract Requirements

This agreement is contingent upon CERB receiving acceptable documentation that the following pre-contract requirements have been completed:

1. Scope of Work
2. Evidence that consultant services have been selected to complete the study.
3. Evidence that the \$16,667 cash match is in place, from the following or alternate sources:
City of Yakima \$16,667 cash

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

**AGREEMENT
BETWEEN
CITY OF YAKIMA, WASHINGTON
AND
GRAHAM BABA ARCHITECTS
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into on this 16th day of May, 2017, 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 Graham Baba Architects with its principal office at 1507 Belmont Avenue, Suite 200, Seattle, WA 98122, hereinafter referred to as "ARCHITECT"; said corporation and its principal architects are licensed and registered to do business in the State of Washington, and will provide architectural services under this Agreement for Business Incubator, Commercial Kitchen, Public Market Real Estate Valuation Study on behalf of the City of Yakima, Project No. 1168Q, herein referred to as the "PROJECT."

**WITNESSETH:
RECITALS**

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

WHEREAS, ARCHITECT 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 ARCHITECT 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 ARCHITECT agrees to perform those services described hereafter. Unless modified in writing by both parties, duties of ARCHITECT shall not be construed to exceed those services specifically set forth herein.
- 2.0.2 ARCHITECT shall use its best efforts to maintain continuity in personnel and shall assign, Brett Baba as Principal-in-Charge throughout the term of this Agreement unless other personnel are approved by the CITY.
- 2.1 Basic Services: ARCHITECT agrees to perform those tasks described in Exhibit A, entitled "Project Scope of Work" (WORK) which is attached hereto and made a part of this Agreement as if fully set forth herein.
- 2.2 Additional Services: CITY and ARCHITECT agree that not all WORK to be performed by 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 ARCHITECT to revise portions of the PROJECT WORK previously completed in a satisfactory manner, delete portions of the PROJECT, or request that the ARCHITECT 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 ARCHITECT'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 accordingly.
 - 2.2.2 Compensation for each such request for Additional Services shall be negotiated by the CITY and the ARCHITECT 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 ARCHITECT shall not perform any Additional Services until so authorized by CITY and agreed to by the ARCHITECT in writing.
- 2.3 The ARCHITECT must assert any claim for adjustment in writing within thirty (30) days from the date of the ARCHITECT's receipt of the written notification of change.

SECTION 3 CITY'S RESPONSIBILITIES

- 3.1 **CITY-FURNISHED DATA:** The CITY will provide to the ARCHITECT all technical data in the CITY'S possession relating to the ARCHITECT'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 ARCHITECT as required for ARCHITECT'S performance of its services and will provide labor and safety equipment as reasonably required by ARCHITECT for such access.
- 3.3 **TIMELY REVIEW:** The CITY will examine the ARCHITECT'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 ARCHITECT of any contractual obligations nor of its duty to render professional services meeting the standards of care for 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. ARCHITECT shall be entitled to reasonably rely on such instructions made by the CITY'S Representative unless otherwise directed in writing by the CITY, but ARCHITECT shall be responsible for bringing to the attention of the CITY'S Representative any instructions which the ARCHITECT believes are inadequate, incomplete, or inaccurate based upon the ARCHITECT's knowledge.
- 3.5 Any documents, services, and reports provided by the CITY to the ARCHITECT are available solely as additional information to the ARCHITECT and will not relieve the ARCHITECT of its duties and obligations under this Agreement or at law. The ARCHITECT 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 there from.

SECTION 4 AUTHORIZATION, PROGRESS, AND COMPLETION

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

SECTION 5 COMPENSATION

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

5.1.1 **DIRECT NON-SALARY EXPENSES:** Direct Non-Salary Expenses are those costs incurred on or directly for the PROJECT including, but not limited to, necessary transportation costs, including current rates for ARCHITECT'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 ARCHITECT.

5.1.1.1 Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by employees of the ARCHITECT 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. ARCHITECT, whenever possible, will use the least expensive form of ground transportation.
- ♦ That reimbursement for meals inclusive of tips shall not exceed a maximum of forty dollars (\$40) per day per person. This rate may be adjusted on a yearly basis.
- ♦ That accommodation shall be at a reasonably priced hotel/motel.
- ♦ That air travel shall be by coach class, and shall be used only when absolutely necessary.

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

5.1.3 Professional Subconsultants. Professional Subconsultants are those costs for engineering, architecture, geotechnical services and similar professional services approved by the CITY. Reimbursement for Professional Subconsultants will be on the basis of actual costs billed plus a reasonable markup, not to exceed ten percent (10%) for services provided to the CITY through this Agreement. Estimated Subconsultant costs are shown in Exhibit B.

5.2 Unless specifically authorized in writing by the CITY, the total budgetary amount for this PROJECT shall not exceed Sixty Five Thousand Dollars (\$65,000). The ARCHITECT will make 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 ARCHITECT is not obligated to incur costs beyond the indicated budget, as may be adjusted, nor is the CITY obligated to pay the ARCHITECT beyond these limits. When any budget has been increased, the ARCHITECT'S excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase, and provided that the City was informed in writing at the time such costs were incurred.

5.3 The ARCHITECT 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 ARCHITECT 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 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 ARCHITECT promptly if any problems are noted with the invoice. CITY may question any item in an invoice, noting to ARCHITECT the questionable item(s) and withholding payment for such item(s). The ARCHITECT may resubmit such item(s) in a subsequent invoice together with additional supporting information required.

- 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 ARCHITECT pursuant to the terms of RCW 39.76.020(4).
- 5.5 Final payment of any balance due the ARCHITECT 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 and execution and delivery by the ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT to satisfactorily perform the PROJECT WORK as required under this Agreement.

SECTION 6 RESPONSIBILITY OF ARCHITECT

- 6.1 The ARCHITECT shall be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all plans, design, drawings, specifications, reports, and other services furnished by the ARCHITECT under this Agreement. The ARCHITECT shall, without additional compensation, correct or review any errors, omissions, or other deficiencies in its plans, designs, drawings, specifications, reports, and other services. The ARCHITECT shall perform its WORK according to generally accepted applicable standards of care and consistent with achieving the PROJECT WORK within budget, on time, and in compliance with applicable laws, regulations, and permits.
- 6.2 CITY'S review or approval of, or payment for, any plans, drawings, designs, specifications, reports, and incidental WORK or services furnished hereunder shall not in any way relieve the ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT shall be solely responsible for any claims for wages or compensation by ARCHITECT employees, agents, and representatives, including subconsultants and subcontractors, and shall save and hold CITY harmless therefrom.
- 6.4 **INDEMNIFICATION:**
- (a) ARCHITECT agrees to indemnify, and hold harmless the CITY, its elected and appointed officials, agents, officers, employees, and volunteers (hereinafter "parties protected") from (1) claims, lawsuits, (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, error or omission or willful misconduct arising out of the ARCHITECT'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 ARCHITECT, the ARCHITECT shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

- (b) CITY agrees to indemnify and hold the ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT, 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 ARCHITECT or a subcontractor under workers' or workmens' compensation acts, disability benefit acts, or other employee benefit acts. The ARCHITECT specifically and expressly waives its immunity under the Industrial Insurance Act, Title 51, RCW. Such waiver has been mutually negotiated by the ARCHITECT and the CITY.

6.6 It is understood that any resident engineering or inspection provided by ARCHITECT 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. ARCHITECT 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 ARCHITECT'S officers, principals, employees, agents, representatives, and engineers as additional insureds on contractor's insurance policies covering PROJECT, exclusive of insurance for ARCHITECT professional liability.

6.7 **SUBSURFACE INVESTIGATIONS:** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observation, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ARCHITECT, to the extent that ARCHITECT has exercised the applicable and appropriate standard of professional care and judgment in such investigations.

SECTION 7 PROJECT SCHEDULE AND BUDGET

7.1 The general PROJECT schedule and the budget for both the entire PROJECT and its component tasks shall be as set forth in this Agreement and attachments. The project schedule and performance dates for the individual tasks shall be mutually agreed to by the CITY and the ARCHITECT 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 ARCHITECT, 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 ARCHITECT 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 ARCHITECT shall submit to the CITY'S Representative a copy of the current schedule and a written narrative description of the WORK accomplished by the ARCHITECT 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 ARCHITECT 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 ARCHITECT, which shall not be unreasonably withheld and will be at the CITY's sole risk. The CITY agrees to indemnify the ARCHITECT 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 ARCHITECT will not be indemnified for such claims, damages, losses, and costs including, without limitation, litigation expenses and attorney fees that were caused by the ARCHITECT's own negligent acts or omissions unrelated to such unauthorized reuse, change or alteration.
- 8.2 The ARCHITECT agrees that ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other WORK submitted and 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 ARCHITECT (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 ARCHITECT, and ARCHITECT does not grant CITY any right or license to such Intellectual Property.

SECTION 9 AUDIT AND ACCESS TO RECORDS

- 9.1 The ARCHITECT, 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 ARCHITECT'S WORK and invoices.
- 9.2 Audits conducted pursuant to this section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agency.
- 9.3 The ARCHITECT agrees to the disclosure of all information and reports resulting from access to records pursuant to this section provided that the ARCHITECT 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 written comments, if any, of the ARCHITECT.
- 9.4 The ARCHITECT shall ensure that the foregoing paragraphs are included in each subcontract for WORK on the Project.
- 9.5 Any charges of the ARCHITECT paid by the CITY which are found by an audit to be inadequately substantiated shall be reimbursed to the CITY.

Section 10. Inspection and Production of Records

- 10.1 The records 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 ARCHITECT 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. ARCHITECT shall provide the CITY sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities. ARCHITECT'S records relating to the WORK will be provided to the CITY upon the CITY'S request.

- 10.2 ARCHITECT 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 State Secretary of State's record retention schedule, ARCHITECT shall retain and provide the CITY access to (and the CITY shall have the right to examine, audit and copy) all of ARCHITECT'S books, documents, papers and records which are related to the WORK performed by ARCHITECT under this Agreement.
- 10.3 All records relating to ARCHITECT'S WORK under this Agreement must be made available to the CITY, and also produced to third parties, if required pursuant to the Washington Public Records Act, Chapter 42.56 RCW or by law. All records relating to ARCHITECT'S WORK under this Agreement must be retained by ARCHITECT for the minimum period of time required pursuant to the Washington State Secretary of State's record retention schedule.

SECTION 11 INSURANCE

- 11.1 At all times during performance of WORK, ARCHITECT shall secure and maintain in effect insurance to protect the CITY and the ARCHITECT from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Agreement. ARCHITECT 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 ARCHITECT carries higher coverage limits than the limits stated below, such higher limits shall be shown on the Certificate of Insurance and Endorsements and ARCHITECT shall be named as an additional insured for such higher limits.

- 11.1.1 **Commercial General Liability Insurance.** Before this Agreement is fully executed by the parties, ARCHITECT 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. In lieu of a certificate, contractor may provide confirmation in writing from their insurance broker that their insurance policy does not contain a subcontract exclusion or one relating to the work of others.

11.1.2. Commercial Automobile Liability Insurance.

- a. If ARCHITECT owns any vehicles, before this Agreement is fully executed by the parties, ARCHITECT 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 ARCHITECT 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 11.1.1 entitled "Commercial General Liability Insurance".

c. Under either situation described above in Section 11.1.2.a. and Section 11.1.2.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 Agreement is fully executed by the parties, ARCHITECT 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 12 SUBCONTRACTS

12.1 ARCHITECT shall be entitled, to the extent determined appropriate by ARCHITECT, to subcontract any portion of the WORK to be performed under this Agreement.

12.2 Any subconsultants or subcontractors to the ARCHITECT 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 ARCHITECT 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 ARCHITECT subcontracting with any additional persons or firms for the purpose of completing this Agreement.

- 12.4 The ARCHITECT 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 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 ARCHITECT 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 14 INTEGRATION

- 14.1 This Agreement represents the entire understanding of CITY and ARCHITECT 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 of all disputes arising under this Agreement shall be Yakima County, State of Washington.

SECTION 16 EQUAL EMPLOYMENT and NONDISCRIMINATION

- 16.1 During the performance of this Agreement, ARCHITECT and ARCHITECT'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. ARCHITECT 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. ARCHITECT may suspend, in writing by certified mail, all or a portion of the WORK under this Agreement if unforeseen circumstances beyond ARCHITECT's control are interfering with normal progress of the WORK. ARCHITECT 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 18.

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 18.1 of this Section, CITY may terminate this Agreement for its convenience, in whole or in part, provided the ARCHITECT 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 termination.
- 18.3 If CITY terminates for default on the part of the ARCHITECT, 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 ARCHITECT 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 ARCHITECT'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 ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 18.1 or 18.2 above, the ARCHITECT 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 ARCHITECT or its subconsultants may have accumulated or prepared in performing this Agreement, whether completed or in progress, with the ARCHITECT 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 ARCHITECT shall have no responsibility to prosecute further WORK thereon.
- 18.7 If, after termination for failure of the ARCHITECT to fulfill contractual obligations, it is determined that the ARCHITECT 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 18.4 of this Section.
- 18.8 If, because of death, unavailability or any other occurrence, it becomes impossible for any key personnel employed by the ARCHITECT in PROJECT WORK or for any corporate officer of the ARCHITECT to render his services to the PROJECT, the ARCHITECT 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 18.3 of this Section.

SECTION 19 DISPUTE RESOLUTION

- 19.1 In the event that any dispute shall arise as to the interpretation 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 either of the afore mentioned methods are not successful then any dispute relating to this Agreement shall be decided in the courts of Yakima County, in accordance with the laws of Washington. 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 North Second Street
Yakima, WA 98901
Attn: Sean Hawkins, Economic Development Manager

ARCHITECT: Graham Baba Architects
1507 Belmont Ave., Ste. 200
Seattle, WA 98122
Attn: Brett Baba

SECTION 21 SURVIVAL

21.1 The foregoing sections of this Agreement 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

Cliff Moore
Cliff Moore

Printed Name: Cliff Moore

Title: City Manager

Date: May 17, 2017

Attest: Shawn Clara Roe
City Clerk

Brett Baba
Printed Name: Brett Baba

Title: Principal

Date: May 9, 2017



CITY CONTRACT NO. 2017-059

RESOLUTION NO. R-2017-064

EXHIBIT A

SCOPE OF WORK

- **Location Selection:** Working with the project's oversight committee, the firm will assist the City in determining the two final locations for evaluation using the recommended locations in the City's feasibility study as a guide to start. Other locations will be determined by the Council Economic Development Committee.
 - **Deliverable – Site analysis report and presentation to Council Economic Development committee** explain options and rationale for highest recommended sites. The Yakima City Council will make the final decision.
- **Design/Layout:** Once the two final locations are determined, complete conceptual project layouts for both locations including evaluation of all necessary infrastructure conditions and needs.
- **Conceptual Drawings:** Engineer will generate conceptual drawings of the interior and exterior of the two locations to generate public interest in the project. A minimum of 6 promotional drawings must be completed for each option.
- **Estimated Construction budget:** Once the final layouts, building needs and infrastructure have been evaluated, the firm will produce a final estimated construction budget for the final two locations.
 - **Final Deliverable - Yakima City Council study session presentation followed by a public evening session on the same night presenting the concept**

EXHIBIT B
Professional Fees

Location Selection	\$12,000	
Design/Layout	\$16,500	
Conceptual Drawings	\$27,000	
Estimated Construction budget	\$7,000	
Presentation to City Council	\$2,500	
TOTAL	\$65,000	

EXHIBIT "C"
SCHEDULE OF RATES

Graham Baba Architecture:

Principal	\$200/hr
Project Designer	\$150/hr
Project Manager	\$100-150/hr
Associate 1-3	\$100-\$130/hr
Architectural Staff	\$75-\$100/hr
Intern	\$55/hr

Note: Rates are subject to change on October 1, annually

RESOLUTION NO. R-2017-064

A RESOLUTION authorizing an agreement for design services for Yakima Business Incubator and Public Market.

WHEREAS, the City of Yakima is committed to assisting entrepreneurs to start businesses within the City and lower barriers to provide for a variety of businesses and opportunities for its residents; and

WHEREAS, increasing opportunities for businesses in Yakima can be a catalyst for job growth and long term economic prosperity for residents and the City; and

WHEREAS, the City has been awarded \$50,000 in Community and Economic Revitalization Board (CERB) planning grant funds to evaluate two real estate opportunities in the City for the construction of a Public Market, or other similar business incubator project. In the 2017 City of Yakima budget, the Council agreed to provide local matching funds for this purpose in an amount up to \$16,667; and

WHEREAS, the City of Yakima has followed the procedures established by the State of Washington to select and recommend a professional firm using the Municipal Research and Service Center Professional Services Roster process to conduct the selection of a firm to conduct a real estate evaluation study for a Public Market and Mixed Use Business Incubator; and

WHEREAS, Graham Baba Architects submitted a Contractor Qualification Statement, was interviewed, and was ultimately selected by a six person Selection Committee consisting of stakeholders, professional staff and City Council members and was determined to be the preferred firm to prepare the Real Estate Evaluation Study for the Yakima Business Incubator and Public Market Study; now, therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized and directed to execute the Professional Services Agreement with Graham Baba Architects, attached hereto and incorporated herein by this reference, in an amount not to exceed Sixty Five Thousand dollars (\$65,000), to provide the Professional Services described in the Agreement.

ADOPTED BY THE CITY COUNCIL this 16th day of May, 2017;

/s/ Kathy Coffey

Kathy Coffey, Mayor

ATTEST;

/s/ Sonya Claar Tee

Sonya Claar Tee, City Clerk



DEPARTMENT OF FINANCE & BUDGET
129 North Second Street
Yakima, Washington 98901

May 17, 2017

Janea Eddy
CERB Program Director
1101 Plum Street
Olympia, WA 98504

Subject: City of Yakima CERB Cash Match

Dear Janea,

This letter is to verify that \$16,667 has been included in the 2017 City of Yakima's General Fund budget as local cash match for CERB Planning Grant A2017-065. The Yakima City Council approved the 2017 Budget at their December 13, 2016 meeting.

We look forward to working on this project.

If you have any questions, please let me know.

Thank you.

A handwritten signature in cursive script, reading "Tara Lewis".

Tara Lewis
Interim Director of Finance & Budget
City of Yakima – 509-576-6639

Planning Study Minimum Requirements

The planning study must contain the following **minimum requirements**:

- a. A product market analysis linked to economic development.
- b. A market strategy containing action elements linked to timelines.
- c. Identification of targeted industries.
- d. Identification of the group responsible for implementing the marketing strategy. Describe the group's capacity to complete the responsibility.
- e. The site's appropriateness by addressing, at minimum, appropriate zoning, affect to the state or local transportation system, environmental restrictions, cultural resource review, and the site's overall adequacy to support the anticipated development upon project completion.
- f. A location analysis of other adequately served vacant industrial land.
- g. Total funding for the public facilities improvements is secured or will be secured within a given time frame.
- h. An analysis of how the project will assist local economic diversification efforts.
- i. Indicate the specific issues that will be addressed.
- j. List one or more economic outcomes that you expect from the proposed CERB project.
- k. Describe the specific, quantifiable measures of the outcome(s) that will indicate success. Describe in measurable terms what you expect to be able to show as progress toward the outcome for each year before the whole outcome has been achieved.
- l. Describe what data you will collect to determine whether the outcome is being achieved.
- m. Describe the data collection procedure including when data will be collected, from whom and by whom.
- n. The estimated median hourly wage of the jobs created when development occurs.
- o. If the project is determined to be feasible, the following information must be provided within the final report:
 1. Total estimated jobs created (in FTEs).
 2. Describe benefits offered to employees.
 3. Describe the median hourly wage of the new jobs in relation to the median hourly county wage.
 4. The county three-year unemployment rate in relation to the state rate.
 5. County population change in the last five years.
 6. The estimated jobs created represent what percentage of the county's labor force.
 7. The estimated jobs created represent what percentage of the county's unemployed workers.
 8. Estimated new annual state and local revenue generated by the private business.
 9. Estimated private investment generated by project.