



CITY OF LEAVENWORTH WASHINGTON

REQUEST FOR PROPOSALS (RFP)

FOR

**UPPER VALLEY PARKS & RECREATION SERVICE AREA
RECREATION NEEDS ASSESSMENT**

Bid Proposals due Wednesday January 15, 2020

Leavenworth City Hall
700 US Hwy 2 / P.O. Box 287
Leavenworth, WA 98826

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REQUEST SUMMARY:

Upper Valley Parks and Recreation Service Area (PRSA) and the City of Leavenworth (City) are seeking proposals from firms to provide a recreation needs assessment. The purpose of this project is to determine the resources and prioritize the needs of the community concerning parks, recreation, and community facilities with a ten to fifteen-year outlook. The selected firm will be responsible for developing and providing services in accordance with the scope of services outlined in this proposal.

INTRODUCTION

City of Leavenworth is a full-service city located on the eastern side of the Cascade Mountain range approximately 125 miles east of Seattle, WA. The City is 1.4 square miles with a residential population of approximately 2,000. Leavenworth is supported with a tourist-based economy. Annual visitor counts are estimated between 1.4 – 1.6 Million. The City is a charter city incorporated in 1907. The City is governed by a seven-member City Council whose members are elected at large and operates under a Strong Mayor form of government.

The Parks and Recreation Service Area (PRSA) is a taxing district or service area formed in 1997. It is a legal entity governed by a board with representatives from Chelan County, the City of Leavenworth, the Peshastin Community Council, the Chumstick community, and Cascade School District #228. The initial objective of this voter-approved Special Purpose District was to construct and maintain a new pool. The Board is currently exploring community interest for the expansion of services and will need to consider extension of the Interlocal Agreement with Chelan County set to expire in 2022.

The current boundaries of the PRSA extend north of the City of Leavenworth up Chumstick Highway, south on Icicle and East Leavenworth Roads, and east into a portion of Peshastin with most properties located just west of Highway 97.

The PRSA Board meets quarterly each year to review and recommend to the City of Leavenworth the operating budget for the outdoor pool. The PRSA collected revenues currently only fund the outdoor pool

The PRSA via Chelan County, has voter approved levies for an Operations and Maintenance and a Debt Service Levy all which is dedicated to support the Outdoor Pool operated by the City of Leavenworth. The City of Leavenworth operates the pool and the PRSA provides a portion of the necessary funding. Pool revenues also include user fees and concessions.

As noted above, the Board is currently exploring community interest for the expansion of services and recreational opportunities within the service area. As a standalone agency, the PRSA could opt to expand and provide new services. Expansion of services and

facilities could be funded through tax levies for O&M or Debt Service, bond issues, user fees, admission charges, and/or concession. In addition, the PRSA may be eligible for funding grants or allocations from the City of Leavenworth or Chelan County depending on the services provided. The PRSA may also be eligible for State and Federal funding programs through qualifying grants, loans, and equipment purchase programs.

BACKGROUND

This section summarizes existing parks and recreation planning processes and documents that have been completed to date. This survey will identify any information gaps and build upon the findings in these planning documents.

Upper Valley Regional Trails Plan (2009): This plan focuses on creating multi-modal trail opportunities for community members of the Upper Valley and visitor populations. The plan incorporates multi-modal trail opportunities for pedestrians, bicyclists, equestrians, and skiers. The plan also focuses on creating connectivity between existing trails throughout the planning area.

In 2011, the City of Leavenworth completed a Parks and Recreation Plan, which contains a description of the demographics, an inventory of existing facilities, an overview of policies, goals, and objectives, and results from a public involvement survey. The survey results and a level of service analysis was used to develop a list of capital facility needs. This study determined that the need for additional park land is not warranted for existing residents and 2030 population projections; however, based upon the number of visiting tourists, this plan concluded that 1,190 acres of park and recreation land are needed to provide an adequate level of service while only 532 acres are provided. This plan also identified capital facility improvement priorities and most of these projects have been implemented in the last eight years. The priorities that remain to be implemented include: an ice rink, indoor pool, children's play area north of Hwy. 2, more sports fields, and some of the recommendations from the Trails plan.

The Parks and Recreation Element of the Chelan County Comprehensive Plan (2017) lists the following projects as Tier 1 priority recreation improvement projects in the Upper Valley: indoor pool/recreation center, tube launch facilities, Leavenworth to Plain bike path, and Leavenworth to Wenatchee non-motorized path.

SCOPE

The goal of this project is to educate the public about the PRSA research, available funding sources to implement recreation projects, and gather information to answer the following questions:

1. Should the PRSA stay focused on operation of the outdoor pool or expand services to build, operate, and/or manage additional facilities?

2. Is there community support for the PRSA to hire a staff person to coordinate current recreational facilities and develop projects and funding to expand facilities?
3. Is there community support, and in what priority, to implement remaining high priority recreation facilities identified in the 2011 report including: an ice rink, indoor pool, Children's play area north of Hwy. 2, more sports fields, recommendations from the Trails plan, and/or more park and recreation space.
4. Summarize community support for various funding strategies for project implementation.

Community outreach for this project will be critical to identifying and building support for recreational needs in the community. The consultant shall determine satisfaction levels of current offerings from users and non-users and identify unmet needs in the community. The following are examples of methods that may be included in the outreach plan:

1. Community Workshops.
2. Stakeholder/User Group Interviews: Staff will provide recommendations on stakeholder groups to target.
3. Residential Mailer and/or Telephone Surveys.
4. Electronic survey to students within Cascade School District.
5. Focus Group meetings with key constituents: This can include meetings with City Staff and the PRSA Board.

The consultant hired will be required to prepare a work plan that includes a timeline and description of proposed community outreach methods. All work will be summarized in a report with recommendations based upon community input. The scope of work will also include development and delivery of a public presentation and one-page fact sheet to summarize findings to the public.

Special Considerations: The proposed outreach plan must include an approach to obtain input from Spanish-speaking residents. The topic of a community center should be included in the analysis for the project; defining a common vision on what the community center may be. The outreach plan should include methods by which the consultant will work with City staff and the PRSA board to ensure there is knowledge of the project throughout the community and robust participation. The tools utilized in the outreach plan should gather information about demographic factors including age group, household size, household income, and ethnicity.

DESIRED QUALIFICATIONS

Strong candidates include individuals/entities that have proven expertise in analysis of administrative data, public outreach, use of publicly available datasets, measurement tool

development, quantitative and qualitative data collection and analysis, synthesis of various data sources into concise recommendations, and clear communication of complex data findings.

Desired qualifications include:

- Strong knowledge & insight with existing community data and needs assessments
- Demonstrated ability to access, analyze, and interpret publicly available datasets
- Demonstrated ability to gather stakeholders to garner a broad range of community voices
- Demonstrated ability to analyze and synthesize large sets of quantitative and qualitative data into clear findings
- Demonstrated ability to design and conduct effective data collection from the public
- Demonstrated cultural competency
- Experience developing formulas/processes to weigh various data points to rank findings

The Parks and Recreation Service Area and City of Leavenworth are open to collaborative applications submitted by two or more entities that propose to complete this project together.

PROPOSAL REQUIREMENTS

Arial font is preferred for proposals. The cover page should be a stand-alone page and each numbered item below should be a denoted heading within the proposal, with sub-headings used as appropriate.

1. Cover Page: Please provide a cover page that includes: Applicant name, mailing address, email address, phone number and name of the primary contact.
2. Statement of Qualifications: Please provide a brief response to each of the following questions. Feel free to include additional relevant information that highlights how you fulfill the desired qualifications listed above. Limit your response to two typed pages.
 - a. Describe any relevant experience that will make you a good candidate to conduct this needs assessment.

- b. Describe your level of knowledge and expertise as it relates to quantitative and qualitative data management and collection, synthesis of large datasets, and communication of complex data findings.
 - c. Describe any experience developing formulas or processes to rank/prioritize data findings based on various data components.
 3. Organizational Chart: If the applicant is not a single individual, provide an organizational chart that identifies each member of the entity involved with the project. The chart should identify who will be the primary contact on the project, the organizational structure of the team, and the specialty and title of each team member. Include all individuals, employees, or sub-contractors who would be utilized on the project.
 - a. Collaborative applications should identify how work will be divided among participating entities.
 4. Proposed Approach: Describe your approach to conduct the recreational needs assessment and produce the desired deliverables outlined in the specifications (pages 1-2). The response should be no more than six typed pages and should include:
 - a. Proposed project plan, including process and methodology to conduct needs assessment according to PRSA specifications.
 - b. Identify existing data sources that will be used to leverage existing needs assessments, reports, and available datasets.
 - c. Outline a plan to gather community input and key stakeholder perspectives, including proposed stakeholders to include and data collection methods.
 - d. Outline a plan to identify the most prevalent needs within recreational needs within the PRSA area.
 - e. Describe an approach to identify available funding that exist to address needs identified in “d” above.
 - f. Describe the process that will be used to incorporate all data sources to create a list of prioritized needs that addresses all desired key components.
 5. Proposed project timeline to complete review of existing data, new data collection, analysis, ranking of findings, and initial presentation of final assessment by June 30, 2020.
 - a. Include short and long-term outcomes with benchmarks toward accomplishment.

6. Describe the final deliverable you plan to develop to show the prevalence of recreational needs within the community.
 - a. An ideal final deliverable may (but does not have to) include both a longer, more detailed report with disaggregated data and a shorter, higher level overview of findings.
7. Budget: Estimated cost to complete the project, including the name, title, rate per hour, and estimated number of hours for all personnel and indirect costs including travel. Consider providing a narrative or justification of budget as appropriate.
8. References and Work Samples/Case Studies: Provide at least two references for previous projects, ideally that are similar in nature and/or scope to this project. Work samples and/or case studies as examples of work quality and experience with similar projects are encouraged. Applicants may also provide links to work products.

SCHEDULE

The PRSA reserves the right to make changes to the below schedule, but plans to adhere to the implementation of this RFP process as follows:

RFP released:	November 27, 2019
Deadline for receiving questions:	December 18, 2019
Response to questions:	December 24, 2019
Proposals due:	January 15, 2020 at 3:00 pm
Finalists selected:	February 7, 2020
Presentations/Interviews (if necessary):	February 10 – 14, 2020
Vendor Selected:	February 26, 2020

RFP SUBMITTAL INFORMATION

The PRSA's designated staff will evaluate proposals received. During the review process, the PRSA reserves the right, where it may serve the PRSA's best interest, to request additional information or clarification from those that submit proposals, or allow clarifications, corrections of errors, or omissions. Any and all changes in the RFP will be made by written addendum, which shall be issued by the PRSA to all prospective applicants who have registered for the RFP via the City of Leavenworth Website and/or PRSA web page.

The PRSA reserves the right to retain all proposals submitted.

The preparation of the proposal will be at the total expense of the applicant. There is no expressed or implied obligation for the PRSA to reimburse Applicant for any expense

incurred in the preparation of proposals in response to this request. If any information in your proposal is confidential and/or proprietary, please further submit a separate, redacted copy for servicing public records requests.

The applicant may submit an alternative proposal (or proposals) that it believes will also meet the PRSAs project objectives but in a different way. In this case, the applicant must provide an analysis of the advantages and disadvantages of each of the alternatives and discuss under what circumstances the PRSA would prefer one alternative to the other(s). If an alternative proposal is submitted, the maximum length of the proposal may be expanded proportionately by the number of alternatives submitted.

The PRSA reserves the right to reject any or all proposals, in whole or part, to waive any informality in any proposal, and to accept the proposal which, in its discretion, is in the best interest of the PRSA. Any applicant may withdraw their proposal, without obligation, at any time prior to the scheduled closing time for receipt of proposals. A withdrawal will not be effective unless made personally or by telephonic notification received prior to the closing date. Proposals may later be referred to the City Council for appropriate action. A Professional Service Contract will be drafted between the City of Leavenworth and the selected contractor. However, the PRSA Board will be the primary oversight committee for this project.

All proposals are due not later than 3:00 PM on January 15, 2020, at which time they will be opened at the City Clerk's Desk on the Second Floor of City Hall. Late submissions will not be accepted. To be considered, applicants must send one (1) color original, one (1) USB flash drive with a searchable PDF copy of the proposal in its entirety, and three (3) hard copies of their proposal in a sealed envelope with the name of the company submitting the proposal and the title of "RFP Upper Valley Parks and Recreation" to:

**City of Leavenworth
City Clerk
P.O. Box 287 / 700 US Hwy 2
Leavenworth, WA 98826**

A template of the Professional Service Contract is provided as Exhibit 1 to this proposal.

RFP QUESTIONS

Questions with regard to this RFP should be submitted by e-mail to Joel Walinski, City Administrator; jwalinski@cityofleavenworth.com, by December 18, 2019. All firms registered for the RFP will receive responses to all questions and any other addenda that may be released, via e-mail, by December 24, 2019.

EVALUATION OF PROPOSALS

Proposals will be judged on the Applicant's ability to provide services that meet the requirements set forth in this document. The PRSA reserves the right to make such investigations as it deems necessary to determine the ability of the Applicant to provide services meeting a satisfactory level of performance in accordance with the PRSA's requirements. Interviews and presentations by one, several, or all of the Applicants may be requested by evaluators, if deemed necessary to fully understand and compare the Applicant's capabilities and qualifications. The adequacy, depth, and clarity of the proposal will influence, to a considerable degree, its evaluation.

Proposals will be evaluated on the basis of the following criteria, in no particular order:

1. Desired Qualifications
2. Proposal Requirements
3. RFP Questions
4. Estimated Costs

As reflected above, contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the PRSA. After evaluating the proposals and discussing them further with the finalists or the tentatively selected Advisor, the PRSA reserves the right to further negotiate the proposed work and/or method and amount of compensation.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF LEAVENWORTH, WASHINGTON
AND _____
FOR CONSULTANT SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into by and between the City of, Leavenworth Washington, a Washington State municipal corporation (“City”), and _____, a Washington _____ (“Consultant”) [LEGAL STATUS OF ENTITY SHOULD BE INSERTED i.e., LLC; Sole Proprietor; LLP; Inc., P.S.; Partnership, Foreign Corporation licensed to do business in Washington State] .

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with consultant services regarding [INSERT SHORT GENERAL DESCRIPTION OF WHAT SERVICES ARE REGARDING] as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit “A”** and incorporated herein by this reference (“Scope of Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 MINOR CHANGES IN SCOPE. The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the

work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

III.3 TERM. The term of this Agreement shall commence on _____ and shall terminate at midnight, _____. The parties may extend the term of this Agreement by written mutual agreement.

III.4 NONASSIGNABLE. The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

III.5 EMPLOYMENT.

a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employee of the of the Consultant.

b. Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

c. Consultant represents, unless otherwise indicated below, that all employees of Consultant that will provide any of the work under this Agreement have not ever been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please indicate No or Yes below)*

_____ No employees supplying work have ever been retired from a Washington state retirement system.

_____ Yes employees supplying work have been retired from a Washington state retirement system.

In the event the Consultant indicates “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid,

Consultant hereby agrees to save, indemnify, defend and hold City harmless from and against all expenses and costs, including reasonable attorney's fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event Consultant affirms that an employee providing work has ever retired from a Washington State retirement system, said employee shall be identified by Consultant, and such retirees shall provide City with all information required by City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

III.6 INDEMNITY.

a. **Indemnification / Hold Harmless.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

c. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

d. **Public Records Requests.**
In addition to Paragraph IV.3 b, when the City provides the Consultant with notice of a public records request per Paragraph IV. 3 b, Consultant agrees to save, hold harmless, indemnify and defend the City its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultants violation of the Public Records Act RCW 42.56, or consultant's failure to produce public records as required under the Public Records Act.

e. The provisions of this section III.6 shall survive the expiration or termination of this agreement.

III.7 INSURANCE.

a. **Insurance Term**
The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

b. **No Limitation**
Consultant's maintenance of insurance as required by the agreement shall not be construed to

limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance - Consultant shall obtain insurance of the types described below:**

- (1). Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- (2). Commercial General Liability insurance shall be written at least as broad on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
- (3). Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4). Professional Liability insurance appropriate to the Consultant's profession.

d. **The minimum insurance limits shall be as follows:**

Consultant shall maintain the following insurance limits:

- (1) Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.
- (2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.
- (4) Professional Liability/Consultant's Errors and Omissions Liability. \$1,000,000 per claim and \$1,000,000 as an annual aggregate.

e. **Notice of Cancellation.** In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

f. **Acceptability of Insurers.** Insurance to be provided by Consultant shall be with insurers with a current A.M.Best rating of no less than A:VII, or if not rated by Best, with minimum surpluses the equivalent of Best VII rating.

g. **Verification of Coverage.** In signing this agreement, the Consultant is acknowledging and representing that required insurance is active and current. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.

h. **Insurance shall be Primary - Other Insurance Provision.** The Consultant's insurance coverage shall be primary insurance as respect the City. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

i. **Claims-made Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

j. **Failure to Maintain Insurance** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

k. **Public Entity Full Availability of Consultant Limits**
If the Consultant maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Consultant.

III.8 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement,

the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified—and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Chelan County Superior Court.

III.11 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

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

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.12 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 SUBCONTRACTORS/SUBCONSULTANTS.

a. The Consultant shall be responsible for all work performed by subcontractors/subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors/subconsultants they directly hire meet the responsibility criteria for the project. Verification that a subcontractor/subconsultant has proper license and bonding, if required by statute, must be included in the verification process. The Consultant will use the following Subcontractors/Subconsultants or as set forth in Exhibit ____:

c. The Consultant may not substitute or add subcontractors/subconsultants without the written approval of the City.

d. All Subcontractors/Subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 PAYMENTS.

a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed \$_____ without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount.

b. The Consultant shall submit a monthly invoice to the City for services performed in the previous calendar month in a format acceptable to the Cities. The Consultant shall maintain time and expense records and provide them to the Cities upon request.

c. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

IV.2 CITY APPROVAL. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 MAINTENANCE/INSPECTION OF RECORDS.

a. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper

facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

b. Public Records

The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the City, the City may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any City records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the City with an estimate of reasonable time needed to fulfill the records request.

ARTICLE V. GENERAL

V.1 **NOTICES.** Notices to the City shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CITY CONTACT]

Notices to the Consultant shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CONSULTANT CONTACT]

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 **TERMINATION.** The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.

V.3 **DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 **EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and

supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

V.5 SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

V.6 NONWAIVER. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

V.7 FAIR MEANING. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

V.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Chelan County, Washington.

V.10 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 201__.

CITY OF _____

[INSERT TRUE AND ACCURATE NAME OF COMPANY]

By _____, Mayor

By _____ [PRINT OR TYPE NAME AND TITLE]

Approved as to form:

_____, City Attorney

Exhibit A
Scope of Services