



CITY OF LEAVENWORTH
REQUEST FOR QUALIFICATIONS

Source Replacement Feasibility Study

Project No. 2022-022

November 2022

**City of Leavenworth
Department of Public Works
700 US Hwy 2 / P.O. Box 287
Leavenworth, WA 98826
Phone: 509-548-5275**

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REQUEST FOR QUALIFICATIONS (RFQ)

1.0 OBJECTIVE

The City of Leavenworth (City) is soliciting qualifications from qualified consulting firms (Consultants) to provide professional services for conducting a municipal water source replacement feasibility study (surface water with ground water) and develop a water conservation/drought plan.

2.0 BACKGROUND

Leavenworth is located in Chelan County and has a 2022 population estimate of 2,263 with approximately 1,400 water service accounts. The City has prioritized its water system for redevelopment over the next 5 years to address deferred maintenance and operational improvements. The City of Leavenworth is a resort and tourist destination for approximately 2 million visitors per year. Festival weekends in Leavenworth attract as many as 60,000 tourists. As a result, water demands can vary substantially with tourism peaks.

In addition, the City is a collaborating stakeholder on the Icicle Work Group (IWG). The IWG, who is funding this project, was formed in December 2012 to find collaborative solutions for water management within the Icicle Creek Watershed. The City is one of several stakeholders participating on the IWG to identify and fund water saving projects.

The water system currently utilizes two pressure zones from a surface water intake and a well field. The Surface Water Treatment Plant (WTP) is located on Icicle Creek, approximately 4 miles south of Highway 2 and constructed in 1969. The Well Field is located near the Wenatchee River and is used as a secondary supply when the water system demands exceed capacity or when the WTP is out of service. The WTP is out of service on occasion due to maintenance or high turbidity in the Icicle Creek.

There are two reservoirs that feed two pressure zones in the water system. The Icicle Road Reservoir supplies water pressure and storage to Zone 1. The Ski Hill Booster Station supplies water pressure to Zone 2 and the Ski Hill Reservoir provides storage to Zone 2. The Ski Hill Booster Pump Station and Reservoir were constructed in 2005 and the Icicle Road Reservoir was reconstructed in 2008. The City has three (3) wells at the Well Field; Well No's. 1 and 2 were constructed in 1989; Well No. 3 went online in 2015 and offers redundancy back-up to the system. Well No. 1 was completely rebuilt in 2013 and rehabilitated in 2022.

In terms of the City's water right portfolio:

Water Source	Cert. No.	Instantaneous Quantity (cubic feet/second)		Annual Quantity (acre-feet/year)	
		Interruptible	Uninterruptible	Non-additive	Additive
Icicle Creek	Cert #4		1.52 cfs	0	1,100
	8105		1.5 cfs	0	1,085.95 <i>(275 per DOE)</i>
	S4-28122	3.18 cfs	0	546	90
	S4-33068(A)	1.10 cfs	0.07 cfs	702	0
Total Surface Water Rights		4.28 cfs 1,921 gpm 2.77 MGD	3.09 cfs 1,387 gpm 2.00 MGD	2275.95 Additive 1248 Non-Additive	
Well Field	437-A		1,000 gpm ^{N/A}	1,100	0
	G4-29958	2,000 gpm	0	900	0
	G4-33068(B)		1,266 gpm	0	702
Total Ground Water Rights		4.46 cfs 2,000 gpm 2.88 MGD	5.05 cfs 2,266 gpm 3.26 MGD	702 Additive 2,000 Non-Additive	
Total Water Rights (City's Position)		8.74 cfs 3,921 gpm 5.65 MGD	5.91 cfs 2,653 gpm 3.82 MGD	2,977.95 Additive	
Total Water Rights (Ecology's Position)		8.74 cfs 3,921 gpm 5.65 MGD	5.91 cfs 2,653 gpm 3.82 MGD	2,167 Additive <i>per DOE</i>	

The City has a desire to evaluate the feasibility of moving away from the Icicle Creek surface water diversion to an additional well field. This year, 2022, the City secured a grant in the amount of \$550,000 from the IWG to fund this work.

3.0 SCOPE OF WORK

The Scope of Work will include, at a minimum, the following elements:

- General
 - Project Management
 - Bi-weekly check-in meetings
- Water right permitting strategy

- Conduct fatal flaws analysis for water right replacement (surface with ground)
- Evaluate Foster risk (Foster risk explained here: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Case-law/Foster-decision>)
- Coordinate with WA Dept of Ecology
- Well siting survey
 - Coordinate with WA Dept of Health
 - Water system planning and distribution system modeling tied to prospective well sites
 - Hydrogeologic modeling/analysis of rivers/wells
 - Identify up to three (3) potential well sites
- Drill up to three (3) test wells
 - Develop performance specifications, bid documents, and perform bidding services to procure a well drilling contractor in accordance with Washington State public works contracting laws
 - Manage a contractor to drill and pump test up to three (3) test wells
 - Assess likely production well performance relative to water right need (now and future)
- Outreach
 - Up to three (3) public outreach meetings
 - Icicle Work Group coordination
- Report
 - Draft report at 90%
 - Final report that includes findings and next steps
 - Provide cost estimates of well site alternatives that includes:
 - Well development
 - Treatment
 - Backup power source
 - Connection to existing distribution system
 - If necessary, property/easement acquisition costs
- Water Conservation and Drought Plan
 - Build upon previous water system plans
 - Include planning for more frequent drought and wildfire risks
 - Outreach
 - Up to three (3) public meetings
 - Produce web-based outreach materials (e.g., ARCGIS Online Storymap)
 - Evaluate the City's current conservation efforts in terms of effectiveness and drought-related vulnerabilities

- Review Chelan County’s water conservation and drought plan for opportunities for synergy
- Develop action items and associated timeline for water conservation measures
- Draft report at 90%
- Final report that includes next steps and action items

4.0 ESTIMATE

The total cost for Professional Services described herein is currently budgeted at \$350,000. Please note, the cost associated with drilling test wells will not be included in this work as well drilling is subject to Washington State procurement laws for public works projects. The test well drilling is estimated to cost \$200,000.

5.0 QUALIFICATIONS PROCESS

Qualification Submission Procedure

Submissions shall be sent **electronically** to Andrea Fischer, City Clerk, at afischer@cityofleavenworth.com by **2:00:00 PM on Friday, December 9, 2022**. Late or incorrectly submitted submissions will be automatically disqualified from consideration. Any qualifications received after the specified date and time will automatically be rejected and will not receive any further consideration by the City.

Consultant Selection Schedule

The solicitation, receipt, and evaluation of submittals and the selection of the Consultant are anticipated to conform to the following schedule. Please note that these dates are subject to change and are only provided for preliminary purposes.

Qualifications Due	December 9, 2022
Qualifications Review	December 23, 2022
Consultant Interviews	January 4, 2023
Consultant Selected	January 6, 2023
City Council Approval	January 10, 2023
Consultant Notice to Proceed Issued	January 23, 2023

Addendums to the Request for Qualifications

Any revisions, updates and/or clarifications of the Request for Qualifications will be posted on the City’s webpage at:

<https://cityofleavenworth.com/documents/category/requests-for-bids-proposals/>

Qualifications Format and Content Requirements

The following requirements must be met in all submittals:

- Submittal shall have a maximum page limit of 10 pages (5 pages if double-sided) excluding title page and/or cover letter.
- **Cover Letter:** Provide a cover letter that, at a minimum, is:
 - On Consultant Firm letterhead
 - Includes “Source Replacement Feasibility Study” in the subject heading
 - A maximum of two (2) pages long
 - Signed by an individual authorized to bind the Consultant to the proposal for a period of 90 days with corresponding and contact information
- **Project Approach:** Describe methods and plan for carrying out the Scope of Work. Provide information on all of the services proposed to be provided as part of this contract and which are identified in the RFQ. The Scope of Work should express specific ideas for the work that will be proposed and why those ideas are the best solution. Any additional or optional recommended tasks should also be included.

List any information and tasks expected from the City. Any information or tasks needed but not listed will be the responsibility of the selected Consultant.

- **Project Schedule:** Provide a proposed draft project timeline including the key milestones:
 - Contract Execution
 - Complete Water Right Permitting Strategy
 - Complete Well Siting Survey and Drilling up to Three (3) Test Wells
 - Complete Source Replacement Study
 - Complete Water Conservation and Drought Plan
 - City Council Review
- **Qualifications and Experience:** This section shall contain the following:
 - Type of organization
 - Size (i.e. local office and total firm size)
 - Number of years as a firm
 - Name, qualifications, and experience of personnel assigned to the Project, including professional registrations and affiliations. When listing sub-consultants, describe the listed experience and the exact tasks that each entity will perform.
 - Outline of recent projects completed that are similar to this Project.

- Client references from recent similar projects, including name, address and telephone number of agency contact(s).
- **List of Project Responsible Personnel:** This list should include the identification of the project manager or contract person with primary responsibility for this contract, the personnel proposed for this contract, and any supervisory personnel, including partners and/or sub-consultants, and their individual areas of responsibility.

Consultant agrees to provide all professional staff necessary to perform the scope of work, including key individuals named in Consultant's proposal. These key personnel shall remain assigned for the duration of the contract, unless otherwise agreed to in writing by the City. In the event Consultant proposes to substitute any key personnel, the individual(s) proposed must demonstrate similar qualifications and experience as required to successfully perform such duties. The City shall have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the project.

- **Organization Chart:** An organization chart containing the names of all key personnel, joint venture partners, and sub-consultants with titles and their specific task assignment for this contract shall be provided in this section.
- **Successful Past Projects:** A list of similar completed projects with original completion dates and actual completion dates. This list may be used as a reference list and, when possible, should include contact information for the respective city/agency.

6.0 CONSULTANT EVALUATION AND SELECTION PROCESS

A committee comprised of City staff will evaluate and select a short list, based on Statement Of Qualification scores, of up to three (3) consultants to make an oral presentation. SOQs will be scored based on the following criteria:

Criteria.....	Total Possible Points
Project Approach.....	30 points
Qualifications and Experience.....	15 points
List of Project Responsible Personnel.....	15 points
Organization Chart	10 points
Successful Past Projects.....	30 points

7.0 CITY CONTACT INFORMATION

Questions regarding this project should be directed to:

Tom Wachholder
Public Works Director
Phone: (509) 548-5275
Email: twachholder@cityofleavenworth.com
Mailing Address:
P.O. Box 287
Leavenworth, WA 98826
Physical Address:
700 US Hwy 2
Leavenworth, WA 98826

8.0 TERMS AND CONDITIONS

The City of Leavenworth exercises its discretion in selecting a firm or individual that presents the proposal that, in sole judgement of the City, best serves the interest of the City. The City reserves the right to waive minor irregularities in any proposal, reject any proposal that fails to meet the proposal requirements in any respect, to reject all proposals for any reason, or to cancel in part or in its entirety the Request for Qualifications.

This Request for Qualifications does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the proposal if it is in the best interest of the city to do so.

All costs for developing a response to this request are the obligation of the respondent and are not chargeable to the City. The respondent must bear all costs associated with the preparation of the submittal and of any oral presentation requested by the City. All responses and accompanying documentation will become property of the City and will not be returned. Statement of Qualifications may be withdrawn at any time prior to the published close date, provided notification is received in writing to the City Contact listed in Section 7.0 of this Request for Qualifications. SOQs cannot be withdrawn after the published close date.

The City of Leavenworth, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252,42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all consultants that will affirmatively ensure that any contract entered into

pursuant to this request for qualifications, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposal in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

9.0 ATTACHMENTS

- Sample Professional Services Agreement

**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 Public Entity, 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 Public Entity.

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 Public Entity, 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. 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. The provisions of this section 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**

The 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 Public Entity'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 at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as 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 Public Entity shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Public Entity using an additional insured endorsement at least as broad as ISO endorsement form 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. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

e. Other Insurance Provision

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 Public Entity. Any insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Consultant's insurance and shall not contribute with it.

f. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. Verification of Coverage

The Consultant shall furnish the Public Entity 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 Agreement before commencement of the work.

h. Notice of Cancellation.

The Consultant shall provide the Public Entity with written notice of any policy cancellation within two business days of their receipt of such notice.

i. 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 Public Entity may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the Agreement 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 Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Consultant from the Public Entity.

j. 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 Agreement 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:

City of Leavenworth
Attn:
PO Box 287
Leavenworth, WA 98826

Accounts Payable via email:
Amber Chittim – achittim@cityofleavenworth.com
Andrea Fisher – permits@cityofleavenworth.com

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 _____, 2022.

CITY OF LEAVENWORTH

[INSERT TRUE AND ACCURATE NAME OF COMPANY]

By

By

Carl J. Florea, Mayor

[PRINT OR TYPE NAME AND TITLE]

Approved as to form:

Thomas H. Graafstra, City Attorney

Exhibit A
Scope of Services