



525 N Third Avenue
Pasco, WA 99301
Phone 509.544.3060

REQUEST FOR PROPOSALS
PFD ATTORNEY
GENERAL LEGAL SERVICES

RESPONSE DUE: December 1, 2025 at 2:00PM

November 2025

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1 INFORMATION AND INSTRUCTIONS

1.1 INVITATION TO PROPOSE

The Pasco Public Facilities District of Pasco, Washington, (PPFD) Executive Director is soliciting Proposals from qualified Firms to provide comprehensive legal and advisory services for district operations. These services include, but are not limited to, general district legal counsel, litigation representation, contract and document review, and assistance with compliance with federal, state, and local laws and regulations. The selected Firm will assist in providing strategic legal advice, drafting legal documents, and representing the PPFD in administrative or judicial proceedings as needed.

The complete RFP and full scope of work may be obtained via the City of Pasco's website – <http://www.pasco-wa.gov/Bids.aspx>. It is the sole responsibility of the Firm to obtain any RFP updates or addenda from the City's website.

Responses shall be submitted electronically. One electronic copy, including attachments, shall be transmitted to the Executive Director at pfd-watkins@pasco-wa.gov. Email Subject shall be: 'RFP – PPFD GENERAL LEGAL SERVICES' with a maximum size of 20mb. **The due date is Monday, December 1, 2025 no later than 2:00pm.**

Technical questions regarding the scope of this project should be put in writing and directed to Matt Watkins at pfd-watkins@pasco-wa.gov no less than three (3) working days prior to the time that submittals are due.

The PPFD, 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 bidders that will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids 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.

Pasco Public Facilities District, Washington

DocuSigned by:


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Prepared by Matt Watkins, Executive Director

1.2 INTENT OF THE PPFD

The objective of this RFP is to provide sufficient information to enable qualified Firms to submit written Proposals that demonstrate experience in comprehensive legal and advisory services for public facilities districts.

This RFP is not a contractual offer, nor is it a commitment to purchase services. Contents of this RFP and the Firm's submittal will be used as the basis to determine final contractual obligations. It is understood that this RFP and the successful Firm's submittal may be attached or included by reference, in part or in whole, to any agreement regarding the services included in this RFP between the PPFD and said Firm.

1.3 QUESTIONS

Any explanation desired by a submitting Firm regarding the meaning or interpretation of the RFP, or any part thereof, must be submitted in writing (via email) and directed to Matt Watkins at pfd-watkins@pasco-wa.gov, no less than three (3) working days prior to the time that submittals are due.

Any interpretation made will be in the form of an addendum to the RFP, issued by the PPFD and will be posted to the City Website – <http://www.pasco-wa.gov/Bids.aspx>. It is the sole responsibility of the Firm to obtain any RFP updates or addenda. Please include “**RFP – PPFD GENERAL LEGAL SERVICES**” in the subject line for all emails and correspondence related to this project.

1.4 SUBMISSION PROCEDURES

For consideration, Firms are required to submit an electronic copy of their Proposal. Failure to provide the submittal in the appropriate manner will result in disqualification. Hard-copy or fax submittals are not permitted and will not be accepted. One electronic copy, including attachments, shall be transmitted to the Executive Director at pfd-watkins@pasco-wa.gov. Receipt time of submittal will be considered the time-stamp of the incoming email created automatically by the City's email server. Firms are encouraged to submit the Proposals with adequate time for the email to be processed by the City's email server.

Email Subject shall be:

- **RFP – PPFD GENERAL LEGAL SERVICES**

Due Date:

- **Monday, December 1, 2025 at 2:00PM**

1.5 LATE SUBMITTALS AND MODIFICATIONS

Submittals and modifications thereof received after the stated time of closing will not be considered. The City and PPFD are not responsible for late deliveries. In accordance with the Due Date from Section 1.4 of this RFP, the time of closing will be determined per the Pacific Time Clock at <http://www.time.gov/>.

1.6 WITHDRAWAL OF SUBMITTALS

Submittals may be withdrawn by written request up to one (1) hour after the stated time of closing, as mentioned above. Determination of the one-hour grace period shall be calculated based on the same reference as identified in Section 1.5.

1.7 CONDITIONS AFFECTING THE WORK

Before submitting a Proposal, each submitting Firm is advised to:

- 1) Examine this RFP documents thoroughly. Review and be familiar with this request.
- 2) Ensure familiarity with federal, state, and local laws, ordinances, rules, and regulations that may – in any manner – affect the cost, progress, or performance of the work.

- 3) Study and carefully correlate said Firm's observations with the RFP response.

Failure to do so will not relieve any Firm from any contractual obligations of the work described herein.

1.8 EXPLANATIONS FOR SUBMITTING Firms

There are eleven (11) pages in this RFP, including the cover sheet, table of contents and body, excluding appendices. Each is sequentially numbered in the bottom right corner of the page (Pages 1–11). Appendix A retained its independent numbering system (A1). It is the responsibility of the submitting Firm to ensure that all pages are included. If any pages are missing, the Firm should immediately request a copy of the missing page(s) by emailing the PPFD Executive Director. Please write "**RFP – PPFD GENERAL LEGAL SERVICES**" in the subject line. It is the responsibility of the Firm to procure missing pages; submittals based on incomplete information will not be granted exception for any faults deriving thereof.

Any explanation desired by a submitting Firm regarding the meaning or interpretation of the RFP, or any part thereof, must be requested in writing (via email) and directed to all PPFD Representative listed in Section 1.9, no less than 72 hours prior to the time that submittals are due. Any interpretation made will be in the form of an addendum to the RFP, issued by the PPFD and will be posted to the City Website – <http://www.pasco-wa.gov/Bids.aspx>. It is the sole responsibility of the Firm to obtain any RFP updates or addenda.

1.9 PPFD REPRESENTATIVE

Matt Watkins, Executive Director
Pasco Public Facilities District
525 N 3rd Avenue
Pasco, WA 99301
ppd-watkins@pasco-wa.gov

1.10 FORMAT OF SUBMITTALS

To assist in the evaluation process, submittals shall conform to the following:

- 1) The submittal shall be limited to a maximum of 15 pages.
- 2) All pages will be counted towards the page total, except for the front cover, back cover, tab pages, staff resumes (each not to exceed 2 pages in length), references, and the cover letter. The cover letter shall be limited to a maximum of 2 pages.
- 3) All pages shall be 8½" x 11".
- 4) Font shall be "Arial" no smaller than "10 point". The body of this RFP is written in "Arial 10-point" as example.
- 5) Margins on all edges should be a minimum of 0.75-inches.

1.11 BASIS FOR SELECTION

A. GENERAL

The selection process will be based on demonstrated experience and qualifications in providing comparable services. For the purposes of this RFP, "comparable services" refers to comprehensive legal and advisory services for public facilities districts, specifically for agencies of a scope to the PPFD or equivalent experience. Additionally, the Firm must show a proven ability to collaborate effectively with PPFD Staff and Board.

B. SELECTION COMMITTEE

The Selection Committee will be made up of PPFD selected individuals and may include the PPFD Representatives listed in Section 1.9 of this RFP.

C. EVALUATION PROCESS

The Selection Committee will review the Proposal submittal and evaluate all responses received based on the criteria provided herein. The PPFD intends to select the Firm who represents the most qualified team to the PPFD and begin the negotiation and award process based on the evaluated scores. Submittals will be scored based on Evaluation Criteria from Section 3.1 of this RFP. The PPFD reserves the right to make a selection based solely on the information contained in the written submittal.

The PPFD further reserves the right to either interview selected Firms or request additional information to help in determining the most qualified Firm. Should the PPFD elect to conduct an interview for shortlisted candidates, interviews will be evaluated per criteria from Section 3.3 of this RFP. The PPFD may make a selection based on any combination of written or interview evaluations.

Selection of the committee shall be final. The selected Firm shall be notified in writing by the PPFD, and no other method shall be considered to be an official notification of selection by the PPFD.

The PPFD reserves the right to reject any or all of the submittals. If the PPFD elects to select one of the submitting Firms, the PPFD will have the right to negotiate with said submitting Firm over the final terms and conditions of the contract in the best interest of the PPFD. The primary objective of the negotiations is to maximize the PPFD's ability to obtain the best value, based on the requirements and evaluations relating to this RFP. If an agreement cannot be reached, the negotiations will be terminated and similar negotiations will occur with the second-ranked submitting Firm.

1.12 PROFESSIONAL SERVICES AGREEMENT

The successful Firm will be required to sign the PPFD's Professional Services Agreement (PSA), a draft of which is enclosed to this RFP in Appendix A. All submitting Firms are directed to carefully review the Professional Services Agreement before preparing their submittal and include any modifications they intend to request to the language of the PSA along with their Proposal. The PPFD will **not** permit significant modification of the language within of the PPFD's Professional Services Agreement. The selected Firm's refusal to sign the PPFD's Professional Services Agreement will render their submission nonresponsive, all dialogues will be immediately terminated, and negotiations will begin with the next highest ranked submitting Firm.

2 SCOPE OF WORK

2.1 BACKGROUND

The Pasco Public Facilities District, Washington, was formed in 2002 in response to the new legislation allowing construction of regional public facilities under RCW Chapter 35.57 and co-extensive with the city limits of the City of Pasco. Pasco is a vibrant and rapidly growing community located at the confluence of the Columbia, Yakima, and Snake rivers in southeastern Washington. With a population of approximately 82,220, Pasco has experienced significant growth, supported by a strong foundation in agriculture, transportation, and community development. The City, The Board consists of five Board members representing various community interests and serve four years terms, appointed by the Mayor of the City of Pasco, and confirmed by a majority of Councilmembers.

In 2002, the Pasco Public Facilities District could not initially construct it's own facility given a \$10M minimum requirement for construction of a facility, but coordinated with the Kennewick Public Facilities District with affirmation from the Attorney General's Office to contribute its portion of sales tax dollars to their Convention Center Project and a portion of the funds to be sent to the City of Pasco's Industrial Development Fund to offset potential impact to the City's long-established convention space, the HAPO Center formally known as the Trade Recreation Agricultural Center (TRAC). This arrangement remains until Kennewick PFD retires the last debt of the convention center or sales tax revenues expire.

The PPFD has contracted via interlocal agreement (ILA) with the City of Pasco for services for the PPFD and continues that relationship with various updates to the ILA as needed for efficient operation and management.

Over the past several decades the PPFD has long wrestled with the expressed community need for an aquatics facility including various studies and in 2022 placed a ballot proposition to the voters on whether to invoke a 0.2% sales tax for the funding of an aquatics facility. Voters approved the measure and the PPFD began receiving sales tax proceeds beginning in 2023. The PPFD also began a process for securing an executive director, land, bonding, an owner's representative, a design-build team under state approved progressive design-build, other needed resources.

With the securing of land in the Broadmoor area of Pasco, \$50M bonding for the first phase of the project, and necessary permitting construction of the facility began in April 2025 and expected to be completed in May of 2025. The ILA with the City is expected to be updated in December 2025 to include management and operation of the facility when it opens.

2.2 PURPOSE

This RFP is issued for the purpose of soliciting qualified Firms to perform comprehensive PPFD attorney services. The selected Firm shall be responsible for performing all tasks and responsibilities outlined in 2.3 and 2.4 of this RFP.

2.3 PPFD ATTORNEY SERVICES

A. General Legal Advice

- Provide legal advice to the PPFD Board members, Executive Director, or staff members on all legal matters related to their duties.
- Maintain knowledge of issues facing the PPFD and deliver timely legal opinions within an established response framework.
- Bring to the attention of the PPFD Board members, Executive Director, or staff of relevance as a result of new legislation or recent court decisions.

A. Meeting Attendance and Preparation

- Attend all regular PPFD meetings (3rd Tuesdays) and agenda setting meetings (2nd Tuesdays) either in-person or via virtual participation.
- Serve as Parliamentarian, provide the PPFD with guidance as to parliamentary procedure and related procedural and parliamentarian matters.
- Participate in additional meetings, special sessions, or committee meetings as requested by PPFD Board or the Executive Director or designee.
- Assist with preparation of meeting agendas and materials.

B. Litigation and Representation

- Advise on PPFD risk and tort law, including advice to avoid civil litigation.
- Represent the PPFD in judicial, arbitration, and mediation proceedings as needed.
- Represent the PPFD in litigation or assist attorneys appointed by the insurance pool.
- Handle administrative proceedings or appeals initiated by or against the PPFD.
- Represent the PPFD in land use and permitting matters.

C. Contract Review and Drafting

- Draft, review, and negotiate contracts, including but not limited to real estate transactions, interlocal agreements, labor agreements, professional services agreements, and service or product procurement contracts.

- Prepare or review motions, resolutions, and other documents as needed to protect the PPFD's interests.

D. Policy and Legislative Compliance

- Review and draft motions and resolutions to ensure compliance with state and federal laws.
- Advise on legislative updates and recent court decisions affecting PPFD operations.

E. Risk Management and Public Records

- Ensure Open Public Meetings Act compliance.
- Counsel PPFD officials on ethical standards and appearance of fairness issues, including conflict avoidance.

F. Training and Consultation

- Provide training on legal roles, duties, and ethical standards to PPFD officials and staff.
- Assist in reviewing and updating PPFD policies.

G. Accessibility and Responsiveness

- Respond to inquiries from the Board, Executive Director, and staff within one business day, providing a timeline for responses and legal opinions.
- Be available for phone consultations, in-person meetings, video conferencing, and site visits.
- Provide regular status reports on active issues as requested.
- Ensure the PPFD Attorney is readily available by phone, email, and video conference for urgent matters.
- Attend special PPFD Board meetings, special sessions, retreats, and committee meetings as requested.

H. Inter-organizational Collaboration

- Coordinate with the City of Pasco and other special legal counsel on specialized matters.
- Maintain liaison with legal experts in areas such as PPFD law, aquatics operations, labor law, and franchise agreements.

2.4 PERFORMANCE STANDARDS

- A. Timeliness: Respond promptly to all legal inquiries and meet deadlines for legal opinions, contract reviews, and other services.
- B. Professional Expertise: Maintain current knowledge of municipal law and provide informed, actionable advice.
- C. Accessibility: Be consistently available to the PPFD Board, Executive Director, and staff for consultations and meetings.
- ~~D.~~ Ethical Compliance: Uphold ethical standards and advise PPFD officials on maintaining transparency and public trust.

2.5 CONTRACT DURATION

The PPFD intends to contract for legal services on an open-ended basis, to continue until either party provides written notice of termination at least ninety (90) calendar days prior to the effective termination date.

The PPFD intends to contract for

2.6 PPFD RESPONSIBILITIES

PPFD staff will assist the selected Firm where possible but said Firm should anticipate and be prepared to be completely self-reliant in accomplishing the tasks requested, as described in this RFP. The PPFD will provide, when available, historical information and any other associated documents.

3 SELECTION CRITERIA

3.1 SUBMITTAL REQUIREMENTS

At a minimum, the following items shall be included in the Proposal. The Selection Committee will perform a review of submitted Proposals based on the point distribution provided in this section.

After the Due Date, submittals received by the PPFD will be provided to the Selection Committee for evaluation. Each submittal will be reviewed by the Selection Committee and scored based upon requirements set forth in this Section. Those requirements, and the scoring below, establish the evaluation criteria herein.

A. EXPERIENCE & QUALIFICATIONS

1) Team Organization, Qualifications **(20 Points Possible)**

In a narrative, identify the team members (include working titles, degrees, certificates and licenses), describe the roles and responsibility of each team member (including sub consultants), and why each team member is critical to the success of the overall contract. Describe the team's experience and capacity for providing the services being requested in this RFP. Indicate the Consultant firm represented by each key team member.

- i. Provide an organizational chart, demonstrating the Firm's relationships and hierarchy of the team described above. Identify key members by name, position, discipline and firm, as well as key back up personnel. Key back up personnel shall be provided for all staff in the org chart.
- ii. Resumes of Firm's key individuals and back up personnel are to be included as an appendix. Resume length shall not exceed two pages per team member. **DO NOT** submit resumes of employees who will not actively work with the PPFD. Note that changing key personnel after the contract has been awarded will be subject to the review and approval by the PPFD.

2) Firm History Summary & Matrix **(25 Points Possible)**

Provide description of previous experience, including a summarized Firm History Matrix. Please indicate what services your Firm rendered for each example referenced. At a minimum, provide a list of five (5) recent agencies the Firm has worked with in the last 10 years. Provide columns in the matrix indicating what members of the team the Firm proposed for this contract to show the extent to which the proposed team had worked with these agencies.

3) References **(10 Points Possible)**

Provide point of contact information (to include names, phone numbers, and email) for the agencies listed by the Firm in the Firm History Matrix. Reference checks will be focused on Firm's performance with each agency, responsiveness, firm's ability to forecast workload, ability to anticipate and mitigate possible issues, meet deadlines with high quality deliverables and resolve conflicts.

B. UNDERSTANDING & APPROACH

- 1) Describe your approach to providing the services outlined in the Scope of Services. Include your methodology for plan design, vendor management, compliance, employee communication, and data analytics. **(15 Points Possible)**

C. FEE STRUCTURE

- 1) Outline your proposed fee structure, including any retainer fees, commission rates, or other costs. **(25 Possible Points)**
- i. Please include additional resources or services.

D. PRESENTATION, ORGANIZATION AND CLARITY OF PROPOSAL

1) Formatting, Document Clarity (5 Points Possible)

Firm's Proposal shall follow formatting requirements as set forth in Section 1.10 of this RFP. Organization of the Proposal, and the manner in which information is presented, should promote the Firm's ability to assemble clear and concise documentation.

3.2 FIRM QUALIFICATIONS

The required minimum qualifications for submitting Firms are as follows.

- A. Minimum five (5) years of experience within or with public facilities district and/or municipal government in providing general municipal legal services is desirable.
- B. Extensive knowledge of federal, state, and municipal statutes, case law, regulations and policies relevant to public facilities districts in areas of civil, land use, and administrative law; of legal procedures; and of courtroom procedures.
- C. Experience in all aspects of municipal law. The PPFD will give preference to individuals or firms with experience in PPFD issues.
- D. Member(s) of the Washington State Bar. The selected firm will be required to declare that it will represent the PPFD to the exclusion of all other clients having potential conflicts with the interests of the PPFD.
- E. Firm should be located within or have satellite offices within the limits of Franklin or Benton County, or otherwise have the technology to allow for timely interactions with PPFD department heads and staff, elected officials, and other legal counsel.

3.3 INTERVIEW PROCESS

Should the PPFD elect to conduct interviews with short-listed candidates, Firms should plan for the following:

- A. Interview format (if used):
 - 1) Approximately 30-minute presentation.
 - 2) Approximately 30 minutes for questions and answers.
 - 3) The Firm's proposed Project Manager shall lead the presentation. The Firm's team participating in the interview must be limited to 3 representatives.
 - 4) The PPFD may elect to conduct a phone interview without the requirement of a presentation.
- B. Presentation: The objective of the interview will be to clearly demonstrate the Firm's qualifications to complete the project to the satisfaction of the PPFD. The presentation shall be brief and concise and shall include but shall not be limited to:
 - 1) Team Organization, Qualifications
 - 2) Firm's History
 - 3) Scope of Services Understanding
 - 4) Description of Approach
 - 5) A discussion of how the team proposes to manage the contract.
 - 6) A description of how the team propose to work and communicate with the PPFD.

Following a review of the submitted Proposals, the PPFD may establish specific requirements and content for the interview to further aid in the determination of the Firm's qualifications. The selection team may prepare a list of

standard questions for the interview. Additional questions may be developed based on the Firm's Proposal to clarify information submitted.

Following selection of a Firm, the PPFD will then negotiate a specific scope of services, fees, and schedule with the selected Firm. If an agreement cannot be reached with the first selected Firm, the PPFD will terminate negotiations with said Firm and open negotiations with the second ranked Firm.



APPENDIX A: PROFESSIONAL SERVICES AGREEMENT
Pasco Public Facilities District Attorney General Legal Services

THIS AGREEMENT is made and entered into between the Pasco Public Facilities District of Pasco, a Washington Municipal Corporation, hereinafter referred to as "PPFD", and CONSULTANT COMPANY NAME, hereinafter referred to as "Consultant," on _____.
[date of execution]

RECITALS

WHEREAS, the PPFD desires to have certain services and/or tasks performed as set forth below requiring specialized skills, training, equipment, and other supportive capabilities; and

WHEREAS, the Consultant represents that it is qualified and possesses sufficient skills, experience, equipment, and necessary capabilities, including: technical and professional expertise, when required, to perform the services and/or tasks as set forth in this Agreement upon which the PPFD is relying.

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

1. Scope of Services. The Consultant shall perform such services and accomplish such tasks, including the furnishing of all labor, materials, facilities and equipment necessary for full performance thereof, as identified and designated as Consultant's Responsibilities throughout this Agreement, and as more particularly described in Scope of Work detailed in **Exhibit A**, attached hereto and incorporated herein (the "Project").

2. Term. This Project shall begin on the execution date listed above and promptly be completed by Month Day, Year.

3. Compensation and Payment.

3.1 Payment for services provided hereunder shall be made following the performance of such services. Such payment shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to complete the Project.

3.2 No payment shall be made for any services rendered by the Consultant except for services identified and set forth in this Agreement except as may be authorized by a written supplemental agreement approved by the PPFD.

3.3 The PPFD shall pay the Consultant for work performed under this Agreement upon timely submitted invoices detailing work performed and expenses for which reimbursement is sought. The PPFD shall approve all invoices before payment is issued. Payment shall occur within *thirty* (30) days of receipt and approval of an invoice.

3.4 The PPFD shall pay the Consultant for all work performed and expenses incurred under this Agreement, as follows.

- ☐ Hourly (Single Rate): \$ _____ per hour plus actual expenses incurred as provided under this Agreement, but not to exceed a total of \$ _____ without prior written authorization by the PPFD; or
- ☐ Hourly (Multiple Rate): Such rates as identified on **Exhibit B**, plus actual expenses incurred as provided under this Agreement, but not to exceed a total of \$ _____ without the prior written authorization by the PPFD; or
- ☐ Fixed Sum: A total of \$ _____
- ☐ Other: _____

4. Reports and Inspections.

- 4.1 The Consultant at such times and in such forms as the PPFD may require, shall furnish to the PPFD such statements, records, studies, surveys, reports, data, and information as the PPFD may request pertaining to matters covered by this Agreement.
- 4.2 The Consultant shall, at any time during normal business hours and as often as the PPFD or the Washington State Auditor may reasonably deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the PPFD, or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The PPFD shall receive a copy of all audit reports made by the agency or firm as to the Consultant's activities. The PPFD may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Consultant's activities which relate, directly or indirectly, to this Agreement. Consultant shall be provided a copy of such reports.
- 4.3 The Consultant, during the term of this Agreement, shall obtain all permits and registration documents necessary for the performance of its work and for the execution of services at its own expense, and shall maintain its validity. Upon request, the Consultant shall deliver to the PPFD copies of these licenses, registration documents, and permits or proof of their issuance or renewal.
- 4.4 Consultant shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review, or audit as provided above.
- 4.5 The Consultant shall retain all books, records, documents, or other material relevant to this Agreement for *three* (3) years after its expiration. Consultant agrees that the PPFD, or its designee, shall have full access and right to examine any of said materials at all reasonable times during this period.

5. Ownership and Use of Documents.

- 5.1 All research, tests, surveys, preliminary data, information, drawings, and documents made, collected, or prepared by the Consultant for performing the services subject to this Agreement, as well as any final product, collectively referred to as "work product," shall be deemed as the exclusive property of the PPFD, including copyright as secured thereon. Consultant may not use them except in connection with the performance of the services under this Agreement or with the prior written consent of the PPFD. Any prior copyrighted materials owned by the Consultant and utilized in the performance of the services under this Agreement, or embedded in with the materials, products and services provided thereunder, shall remain the property of the Consultant subject to a license granted to the PPFD for their continued use of the products and services provided under this Agreement. Any work product used by the Consultant in the performance of these services which it deems as "confidential," "proprietary," or a "trade secret" shall be conspicuously designated as such.

- 5.2 In the event of Consultant's default, or in the event that this Agreement is terminated prior to its completion, the work product of the Consultant, along with a summary of the services performed to date of default or termination, shall become the property of the PPFD, and tender of the work product and summary shall be a prerequisite to final payment under this Agreement. The summary of services provided shall be prepared at no additional cost, if the Agreement is terminated through default by the Consultant. If the Agreement is terminated through convenience by the PPFD, the PPFD agrees to pay Consultant for the preparation of the summary of services provided.

6. Public Records.

- 6.1 Consultant acknowledges that the PPFD is an agency subject to Chapter 42.56 RCW "Public Records Act." All preliminary drafts or notes prepared or gathered by the Consultant, and recommendations of the Consultant are exempt prior to the acceptance by the PPFD or public citation by the PPFD in connection with PPFD action.
- 6.2 If the Consultant becomes a custodian of public records of the PPFD and request for such records is received by the PPFD, the Consultant shall respond to the request by the PPFD for such records within *five* (5) business days by either providing the records, or by identifying in writing the additional time necessary to provide the records with a description of the reasons why additional time is needed. Such additional time shall not exceed *twenty* (20) business days unless extraordinary good cause is shown.
- 6.3 In the event the PPFD receives a public records request for protected work product of the Consultant within its possession, the PPFD shall, prior to the release of any protected work product or as a result of a public records request or subpoena, provide Consultant at least *ten* (10) business days prior written notice of the pending release and to reasonably cooperate with any legal action which may be initiated by the Consultant to enjoin or otherwise prevent such release.

7. Independent Contractor Relationship.

- 7.1 The parties intend that an independent contractor relationship is created by this Agreement. The PPFD is interested primarily in the results to be achieved; subject to the scope of services and the specific requirements of this Agreement, the implementation of services will lie solely with the discretion of the Consultant. No agent, employee, officer or representative of the Consultant shall be deemed to be an employee, agent, officer, or representative of the PPFD for any purpose, and the employees of the Consultant are not entitled to any of the benefits or privileges the PPFD provides for its employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, officers, subcontractors or representatives during the performance of this Agreement.
- 7.2 In the performance of the services provided in this Agreement, Consultant is an independent contractor with full authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the PPFD and shall be subject to the PPFD's general rights of inspection and review to secure the satisfactory completion thereof.
- 7.3 The Consultant shall comply with all State and Federal laws including, but not limited to:
- 7.3.1 The definition requirements of RCW 50.04.140 (Employment Security).
 - 7.3.2 RCW 51.08.195 (Industrial Insurance).
 - 7.3.3 Obtain a City of Pasco business license.
- 7.4 The PPFD may, at its sole discretion, require the Consultant to remove any employee, agent or servant from employment on this Project who, in the PPFD's sole discretion, may be detrimental to the PPFD's interest.

- 7.5 Consultant as an independent contractor and not an employee shall not be entitled to any employee benefits including but not limited to vacation time, sick leave, paid time off, or paid holidays.

8. Indemnification.

- 8.1 The Consultant shall defend, indemnify, and hold harmless the PPFD, 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 PPFD.
- 8.2 However, 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 PPFD, 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 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.
- 8.3 No liability shall attach to the PPFD by reason of entering into this Agreement except as expressly provided herein.
- 8.4 This indemnification shall include damages, penalties and attorney fees sustained as a result of Consultant's delayed or failed performance of Section 6 above.

9. Insurance. 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, employees, or subcontractors. 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 PPFD's recourse to any remedy available at law or in equity.

- 9.1 Minimum Scope of Insurance. Consultant shall obtain insurance of the types and coverage described below:
- 9.1.1 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.
- 9.1.2 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 PPFD shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the PPFD using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
- 9.1.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- 9.1.4 Professional Liability insurance appropriate to the Consultant's profession.
- 9.2 Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:
- 9.2.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 9.2.2 Commercial General Liability insurance shall be written with limits no less than:

- ☒ \$2,000,000 each occurrence; and
- ☒ \$2,000,000 general aggregate;

9.2.3 Professional Liability insurance shall be written with limits no less than:

- ☒ \$2,000,000 per claim; and
- ☒ \$2,000,000 policy aggregate limit;

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

9.3.1 The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after *thirty* (30) days prior written notice by certified mail, return receipt requested, has been given to the PPFD.

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

9.5 **Verification of Coverage.** Consultant shall furnish the PPFD 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.

9.6 **Notice of Cancellation.** The Consultant shall provide the PPFD with written notice of any policy cancellation within *two* (2) business days of their receipt of such notice.

9.7 **PPFD Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the PPFD 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 PPFD evidences limits of liability lower than those maintained by the Consultant.

9.8 **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 PPFD may, after giving *five* (5) 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 PPFD on demand, or at the sole discretion of the PPFD, offset against funds due the Consultant from the PPFD.

10. **Nondiscrimination.** In the performance of this Agreement, the Consultant will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Consultant shall ensure that applicants are employed, and that employees are treated during employment in the performance of this Agreement without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Consultant shall take such action with respect to this Agreement as may be required to ensure full compliance with local, State and Federal laws prohibiting discrimination in employment.

11. **Covenant Against Contingent Fees.** The Consultant warrants that it has not employed nor retained any company, firm, or person, other than a bona fide employee working exclusively for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company, person or firm,

other than a bona fide employee working exclusively for the Consultant, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the PPFD shall have the right to terminate this Agreement.

12. Assignment and Subcontracting.

- 12.1 The PPFD has awarded this Agreement to the Consultant due to its unique qualifications to perform these services. The Consultant shall not assign (or subcontract other than as specifically identified in Exhibit A) its performance under this Agreement or any portions of this Agreement without the prior written consent of the PPFD, which consent must be sought at least thirty (30) days prior to the date of any proposed assignment.
- 12.2 Any work or services assigned or subcontracted hereunder shall be subject to each provision of this Agreement including Section 6, Public Records; Section 10, Nondiscrimination; proper bidding procedures where applicable; and all local, State and Federal statutes, ordinances and guidelines.
- 12.3 Any technical or professional service subcontract not listed in this Agreement, must have prior written approval by the PPFD.

13. Termination.

- 13.1 Termination for Convenience. Either party may terminate this Agreement for any reason upon giving the other party no less than ten (10) business days written notice in advance of the effective date of such termination.
- 13.2 Termination for Cause. If the Consultant fails to perform in the manner called for in this Agreement, or if the Consultant fails to comply with any other provisions of this Agreement and fails to correct such noncompliance within five (5) business days of written notice thereof, the PPFD may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant will only be paid for services and expenses complying with the terms of this Agreement, incurred prior to termination.

14. General Provisions.

- 14.1 For the purpose of this Agreement, time is of the essence.
- 14.2 Notice. Notice provided for in this Agreement shall be sent by:
 - 14.2.1 Personal service upon the Project Administrators; or
 - 14.2.2 Certified mail to the physical address of the parties, or by electronic transmission to the e-mail addresses designated for the parties below.
- 14.3 The Project Administrator for the purpose of this Agreement shall be:

For the PPFD:
NAME, Accreditation(s)., or designee
TITLE
525 N 3rd Ave
Pasco, WA, 99301
e-mail address

For the Consultant:
NAME, Accreditation(s)., or designee
TITLE
ADDRESS, SUITE #
CITY, ST, ZIP
e-mail address

15. Dispute Resolution.

- 15.1 This Agreement has been and shall be construed as having been made and entered into and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington.
- 15.2 In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the Project Administrators, or their designees, shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Pasco, Franklin County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.
16. **Nonwaiver.** Waiver by the PPFD of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other similar event or other provision of this Agreement.
17. **Integration.** This Agreement between the parties consists in its entirety of this document and any exhibits, schedules or attachments. Any modification of this Agreement or change order affecting this Agreement shall be in writing and signed by both parties.
18. **Authorization.** By signature below, each party warrants that they are authorized and empowered to execute this Agreement binding the PPFD and the Consultant respectively.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

PPFD, WASHINGTON

CONSULTANT COMPANY NAME

Matt Watkins, Executive Director

CONSULTANT, TITLE

ATTEST:

APPROVED AS TO FORM:

Debra C. Barham, City of Pasco Clerk

Kerr Ferguson Law, PLLC, City Attorney