



Request for Proposals (RFP) 12306P Merchant Services

Submit Proposals To:

Yakima City Hall
City Clerk's Office
129 N 2nd Street
Yakima, WA 98901

Issue Date:
Proposals Due:

February 3, 2023
March 3, 2023
11:00:00 a.m. PST

City of Yakima
NOTICE TO PROPOSERS
RFP NO. 12306P

Notice is hereby given by the undersigned that sealed Requests for Proposals will be accepted by the Clerks' Office located at City Hall, 129 N. 2nd Street, Yakima, Washington 98901, until the hour of 11:00:00 AM PST on March 3, 2023. At such time, RFPs will be publicly opened in Council Chambers and Proposer's names will be read for: **Merchant Services**

The City of Yakima reserves the right to reject any & all RFPs. The City hereby notifies all Proposers that it will affirmatively ensure compliance with WA State Law Against Discrimination (RCW chapter 49.60) & the Americans with Disabilities Act (42 USC 12101 et set.). The awarded firm will follow the applicable provisions of the Americans with Disabilities Act of 1990, and will be an equal opportunity employer as defined in Title VII of the Civil Rights Act of 1964, and applicable Washington State law.

Dated January 31, 2023. Publish on February 3 and 5, 2023
Christina Payer, Buyer II

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City of Yakima
Request for Proposals (RFP) 12306P
Merchant Services

I. GENERAL INFORMATION

1. Introduction

The purpose of this Request for Proposal (RFP) is to provide interested parties with information to enable them to prepare and submit a proposal for Merchant Services. The City of Yakima Utility Services Division (referred to as “Owner” throughout this document), as represented by City Purchasing, intends to use the results of this solicitation to award a contract for such services.

2. Summary and Objectives

The City of Yakima Utility Service Division is seeking proposals from qualified and experienced vendors to provide Merchant Services; to enable its customers to electronically process all consumer credit card and debit card payments made across multiple payment environments. Including through the Internet, Interactive Voice Response (IVR) systems, Point of Sale, and Bill presentment and payment.

To aid in the success of each deployment, the vendor will provide professional services for project management, systems integration and payment optimization and will work with the City’s back office systems, to provide an easy transition and implementation process.

3. Community Overview

The City of Yakima, county seat of Yakima County, was incorporated in 1886 and is located in central Washington State. It encompasses 28.7 square miles in an area of rich volcanic soil. The City is 145 miles southeast of Seattle, and 200 miles southwest of Spokane, Washington. The region is served by rail, highway and air transportation facilities, which have helped develop the City as the commercial and business center of Central Washington. With a 2020 population of 96,968, Yakima is the eleventh largest city in the State of Washington.

4. Contracting Agency and Point of Contact

This RFP is issued by the City of Yakima Purchasing Division. All inquiries concerning this RFP must be submitted to:

Christina Payer, Buyer II

129 N 2nd Street

Yakima, WA 98901

Telephone: (509)576-6696; E-mail: christina.payer@yakimawa.gov

Proposers should consider the Purchasing Buyer as the first point of contact on all matters related to the procedures associated with this RFP. If additional information is needed from any source, the Purchasing Buyer will work with the Proposer to gather that information.

5. Clarifications and/or Revisions to Specification and Requirements

If a Proposer discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this solicitation, the Proposer has an affirmative duty to immediately notify the Buyer of such concern and request modification or clarification of the RFP document.

Unless instructions are specifically provided elsewhere in this document, any questions, exceptions, or additions concerning the subject matter of the RFP document(s) shall not be considered unless submitted via e-mail (no phone calls) to the Buyer listed above in item 4, a minimum of five business (5) days prior to the submittal due date.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, supplements or revisions will be provided to all known Proposers in the form of an Addendum. All Addenda are

posted on www.yakimawa.gov/services/purchasing and/or sent directly to interested parties who have registered for updates to this RFP.

If any requirements of the RFP are unacceptable to any prospective Proposer, they may choose not to submit a proposal.

6. Acknowledgment of Addendum or Addenda to RFP

Receipt of any addendum or addenda to this RFP must be acknowledged in your response to Section 2, Item 3, Tab 2, No. 5.

7. Calendar of Events

Listed below are important dates and times by which actions related to this RFP may be completed. In the event that the Owner finds it necessary to change any of these dates and times it will do so by issuing an addendum to this RFP.

Project Milestone	Anticipated Date
RFP Issued	February 3, 2023
Deadline for Written Questions/Answers	February 10, 2023
Proposal Submittal Due Date/Time	11:00 a.m. PST on March 3, 2023
Evaluation of Submittals by City	March 6-10, 2023
Notification of Shortlist/Interviews or Vendor Presentations	March 13-17, 2023
Recommendation of Intent to Negotiate	March 22-24, 2023
Anticipated Contract Award by City Council	April 2023
Implementation	April – May 2023
Assumption of Merchant Services (Sooner if possible, but no later than)	February 1, 2024

The schedule of events after the Proposal due date will be handled as expeditiously as possible, but there is not a set schedule. An Evaluation Team will be formed to evaluate proposals and may choose to interview Proposers or have Presentations. Every effort will be made to notify short-listed proposers of important post-opening dates.

8. Public Records Access

It is the intention of the Owner to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Proposal openings are public.

9. Requests for Public Disclosure

Washington State Public Disclosure Act (RCW 42.56 et seq.) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged. All documents submitted in relation to this Specification shall be considered public records and, with limited exceptions, will be made available for inspection and copying by the public. It is the intent of the Owner (City) to post all RFP responses online and available to the public after the contract is signed.

Marking the entire submittal as “confidential” or “proprietary” is not acceptable and is grounds to reject such submittal. If, in the Owner’s opinion, the material is subject to disclosure, the Owner will notify Proposer of the request and impending release which will allow the Proposer 10 days from notice to take whatever action it deems necessary to protect its interests. All expense of such action shall be borne solely by the Proposer, including any damages, attorney’s fees or costs awarded by reason of having opposed disclosure and Proposer shall indemnify Owner against same. If the Proposer fails or neglects to take such action within said period, the Owner will release all

materials deemed subject to disclosure. Submission of materials in response to this solicitation shall constitute assent by the Proposer to the foregoing procedure and the Proposer shall have no claim against the Owner on account of actions taken pursuant to such procedure.

10. Proprietary Information

Any consideration of proprietary information is the responsibility of the Proposer to object to through the courts following third party notice, not the Owner (City).

All information submitted in response to a request for public disclosure will be handled in accordance with applicable Owner procurement regulations and the Washington State Public Records Act (RCW 42.56 et seq.). It is the Proposer's responsibility to defend the determination in the event of an appeal or litigation.

Unless otherwise noted, data contained in a proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the Owner.

11. Retention of Rights

The Owner retains the right to accept or reject any or all proposals if deemed to be in its best interests.

All proposals become the property of Owner upon receipt. All rights, title and interest in all materials and ideas prepared by the proposer for the proposal to Owner shall be the exclusive property of Owner and may be used by the Owner at its option.

12. Contract Term

See Section 3 of Contract.

13. Incurring Costs

The Owner is not liable for any cost incurred by a Proposer in the process of responding to this RFP including but not limited to the cost of preparing and submitting a response, in the conduct of a presentation, in facilitating site visits or any other activities related to responding to this RFP.

14. No Obligation to Contract

This RFP does not obligate the Owner to contract for service(s), or product(s) specified herein. Owner reserves the right to cancel or reissue this RFP in whole or in part, for any reason prior to the issuance of a Notice of Intent to Award. The Owner does not guarantee to purchase any specific quantity or dollar amount. Proposals that stipulate that the Owner shall guarantee a specific quantity or dollar amount will be disqualified (e.g. "all-or-none".)

15. Best Modern Practices

All work, including design, shall be performed and completed in accordance with the best modern practices, further, no detail necessary for safe and regular operation shall be omitted, although specific mention thereof may not be made in these specifications.

16. Equal/Approved Equal

These specifications are intended to be precise where a specific make, model or trade name is requested. Whenever a make, model or trade name is used, it shall be that or equal, or approved equal. Equal or approved equal means that the make, model or trade name will be given consideration if they fulfill the same performance requirements. The City reserves the right to make the decision on acceptability. Each proposer shall clearly identify make, model or trade name of equipment proposed in their proposal. Any equipment proposed as an equal to that herein specified must be substantiated with supporting data to justify such request for substitution.

17. More or Less

Quantities are estimated only and shall be bid on a MORE OR LESS basis. For the purpose of comparison, bid proposals shall be made in the quantities listed in this specification. Listed quantities shall not be considered firm estimates of requirements for the year, nor shall the City be bound or limited to quantities listed. Payment will be made only for quantities actually ordered, delivered, and accepted, whether greater or less than the stated amounts.

18. Payment Method – Credit Card Acceptance

The City, in its sole discretion, will determine the method of payment for goods and/or services as part of this agreement. The City's preferred method of payment is by procurement (credit) card. Proposers may be required to have the capability of accepting the City's authorized procurement card as a method of payment. No price changes or additional fee(s) may be assessed when accepting the procurement card as a form of payment.

19. Cooperative Purchasing

The Washington State Interlocal Cooperative Act (RCW 39.34) provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties agree. The City of Yakima does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

II. PREPARING AND SUBMITTING A PROPOSAL

1. General Instructions

The evaluation and selection of a Contractor will be based on the information submitted in the Proposal plus references, and any on-site visits or best and final offers (BAFOs) where requested. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a Proposal.

2. Submitting a Proposal

Submit one signed, original hardcopy of your Proposal and one digital copy on flash drive to City of Yakima Clerk's Office: 129 N 2nd Street, Yakima, WA 98901, no later than **11:00 a.m. PST on March 3, 2023**. All submittals shall be sealed in an envelope and clearly titled: "RFP 12306P Merchant Services". Modifications to submissions may be submitted prior to the date and time specified for receipt of submissions.

LATE RFP SUBMITTALS WILL NOT BE CONSIDERED. E-MAILED SUBMITTALS WILL NOT BE ACCEPTED. RFP submittals, which do not include all requested information and required documentation, may be considered non-responsive.

Any sections deemed by proposer to be confidential per Washington State Public Disclosure Act (RCW 42.56 et seq.) shall be separated from the main document and uploaded to Public Purchase in a separate file marked "confidential". All other sections of the response shall be made available to the public immediately after contract signing. All materials required for acceptance of the Proposal by the deadline must be uploaded to Public Purchase.

3. Organization and Format of Required Proposal Elements

Proposers responding to this RFP must comply with the following format requirements. The Owner reserves the right to exclude any responses from consideration that do not follow the required format as instructed below.

Proposals shall be organized and presented in the order and by the numbers assigned in the RFP with each heading and subheading should be separated by tabs or otherwise clearly marked.

Tab 1 - Table of Contents

Provide a table of contents for the Proposal.

Tab 2 – Proposal Cover Letter

The Proposal Cover Letter must be written on the Proposer's official business stationery and signed by an official authorized to legally bind the Proposer. No more than two pages shall be attached to the front of the proposal and shall include the following information:

1. Name and title of Proposer representative;
2. Name, physical and mailing address of company;
3. Telephone number, fax number, and email address;
4. RFP number and title;

Statement that:

5. Proposer acknowledges receipt of any addendum or addenda issued;
6. Proposer believes its Proposal meets all the requirements set forth in the RFP;
7. Proposer acknowledges the Proposal conforms to all procurement rules and procedures articulated in this RFP, all rights terms and conditions specified in this RFP;
8. Individual signing the Proposal is authorized to make decisions as to the prices quoted and that she/he has not participated and will not participate in any action contrary to the RFP;
9. Proposer will be making a number of representations outside of its formal Proposal document in, possibly, discussions, presentations, negotiations, demonstrations, sales or reference material and other information-providing interactions and as such hereby warrants that the Owner can rely on these as inducements into any subsequent contract, and be made a part thereof.

Tab 3 – Merchant Services Cost Proposal

Provide all cost information according to the instructions provided in Section IV, item 1. Include all costs for furnishing the product(s) and/or service(s) included in this proposal. Identify all assumptions. Failure to provide any requested information in the prescribed format may result in disqualification of the Proposal or a lower scoring. Also include on a separate sheet under this tab a list of all Optional Services and the price for each service.

Tab 4 – Response to Merchant Services Questionnaire

Provide the organization's response to the Merchant Services Questionnaire as indicated in Section IV, item 2. Please provide a complete response to all questions in the same order presented.

Tab 5 - Sample Contract and Terms and Conditions

The Sample Contract provided with this RFP represents the terms and conditions which the Owner expects to execute in a contract with the successful Proposer. **Proposers must accept or submit point-by-point exceptions along with proposed alternative or additional language for each point.** The Owner may or may not consider any of the Proposer's suggested revisions. Any changes or amendment to any of the Contract Terms and Conditions will occur only if the change is in the best interest of the Owner.

A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the City, at its sole discretion, may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

Tab 6 – References

Provide a list of long-standing and recent municipal customers for which you have provided services that are essentially equivalent to those requested by the City; highlight references in Washington State. References should have current contact information and are to include a minimum of:

- Customer name, Business address
- Name and title of principal customer contact
- Telephone number and email of contact
- Description of services or product provided
- Dates of services or product provided and date service was terminated (if applicable) and why.

- Brief description of similarities of reference to City of Yakima and why this customer reference is relevant.

The city may also consider other sources of pertinent past performance information including the City's own experience with the Proposer in the past ten years.

4. Multiple Proposals

Multiple Proposals from a Proposer will be permissible; however, each Proposal must conform fully to the requirements for proposal submission. Each such Proposal must be submitted separately and labeled as Proposal #1, Proposal #2, etc. on the first page of their response.

5. Withdrawal of Proposals

Proposers may withdraw or supplement a proposal at any time up to the proposal closing date and time. If a previously submitted proposal is withdrawn before the proposal due date and time, the Proposer may submit another proposal at any time up to the proposal closing date and time. After proposal closing date and time, all submitted Proposals shall be irrevocable until contract award.

III. SCOPE OF SERVICES

1. System Functions

Easy integration of data with the City's back office systems, utility billing and cashiering system. **System must be fully PCI compliant.** The following are requirements for the Hosted Credit Card Payment System that must be provided:

- Transactions deposited within 24 hours to the City's bank account.
- Must be PCI compliant at all levels.
- Single reporting system across all payment types and services.
- Department specific reporting supported through password controls to facilitate reconciliation.
- Online Automated Clearing House (ACH) returns and credit card chargeback reporting.
- Customize transaction-identifying data fields per e-commerce service to accommodate all the unique needs of each department including standard reporting and ad-hoc reporting.
- Access online payment management tools to enable the City to administer all e-payments such as voids, credits, adjustments, reporting, customer service and verifications in real-time.
- On-line status indicator of electronic payment services.
- Convenience fee and non-convenience fee support.
- Supports all major credit cards and branded debit cards.
- Transaction integrity checking reducing the risk of double payment.
- Once implemented the City can select or change processors, add or remove financial institutions without any loss of time or investment in prior implementation efforts.
- Separate monthly invoice for billing of any fees.
- Implementation and support of an Interactive Voice Response (IVR) banking system.

2. Credit/Debit Card Services

The Financial institution will provide the City with the ability to accept payment through the use of credit/debit cards. The City Utility Services Division currently accepts MasterCard and Visa credit cards in person, on-line and via kiosk. Currently payments are received for utility bills and miscellaneous invoices. This may expand for other types of payments as well. The City will be credited daily for the gross amount of the bank card transactions. Any sales discount fee or percentage proposed will be billed at the end of each month as part of the activity charges.

3. Pricing Schedule

The pricing schedule, to be included with the Cost Proposal below, MUST remain firm for 18 months from award date.

IV. COST PROPOSAL

1. Merchant Services Cost Proposal

a. General Instructions for Preparing Cost Proposal

Proposer must submit a cost proposal and price schedule under Tab 3 of their proposal. If proposer agrees to allow other governmental agencies to purchase goods or services from the awarded Contractor under the resulting contract, price accordingly so other jurisdictions can perform an apples-to-apples comparison for their resulting contract.

b. Total Project Cost Including Pricing Schedule

Proposer must provide a total project cost to include all requisite services, materials, work products, ancillary expenses and pricing schedule. The engagement will be a time and materials project. **Please identify any other fees and costs for additional services being proposed.**

Include the following information in your cost proposal:

- i. Please provide calculation for payments based on transactions of 5, 10, 25, 50 and 100 dollars. This should show how the City will be charged for a transaction.
- ii. Provide a funds availability schedule by card type. Is it negotiable?
- iii. What is the settlement deadline?
- iv. What daily and/or monthly reconciliation reports are available?
- v. Do you offer recurring billing processing?

c. Miscellaneous Expenses – Onsite Services

- i. Contractor and any subcontractors' travel expenses (e.g. airfare, lodging, and meals, insurance) and other miscellaneous expenses related to the provision of on-site services must be included in the proposed cost and cannot be an additional charge.
- ii. Contractor's expenses related to providing on-site services (e.g. computer, printer, miscellaneous equipment) must be included in the proposed cost and cannot be an additional charge.
- iii. Owner will coordinate and provide any requisite meeting space for on-site services.
- iv. Work related travel expenses will be reimbursed at the current Washington Department of Administration published per diem rates which can be viewed at: <https://ofm.wa.gov/accounting/administrative-accounting-resources/travel/diem-rate-tables>.

d. Pricing and Discount

The Owner qualifies for governmental discounts. Unit prices shall reflect these discounts. Unit prices shown on the proposal or contract shall be the price per unit of sale (e.g., hour, ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the proposal evaluation and contract administration.

e. Prompt Payment

Proposers are encouraged to offer a discount for prompt payment of invoice. Please include any discount in your cost proposal, or indicate zero discount offered. If awarded by the City, period of entitlement begins only after:

- Receipt of a properly completed invoice
- Receipt of all supplies, equipment or services ordered
- Satisfactory completion of all contractual requirements

f. PCI Audit

Submit your most recent PCI audit for review.

g. **Financial Capability to Perform Contract**

Proposer shall submit either a current Financial Review or Compilation Report by a CPA firm, which is not to be older than one (1) year, or a Financial Statement from their bank asserting that Contractor has the Financial Capability to perform this contract. Owner reserves the right to use other means to substantiate Financial Capability, e.g. D&B reports, BBB, or other means.

2. Merchant Questionnaire

The intent of the questionnaire is to provide a standard format to enable the City to evaluate the organization's ability to provide the services requested. Please provide a complete response to all questions in the same order presented. Proposer must submit response to questionnaire under Tab 4.

PROCESSOR OVERVIEW

- a. Provide a general overview and brief history of the processing of credit card payments.
- b. Identify if you offer card processing or hire a third-party processor. Identify third party processors.

TECHNICAL CAPABILITIES

- c. Identify if you can process transactions with our existing equipment, software and gateways. If not, identify which components will need to be changed and any associated costs.
- d. Identify all software and gateways that you can interface with.
- e. Identify the latest time that sales transactions can be transmitted to meet settlement times.
- f. Describe the card processing transaction flow and, if applicable, how it relates to your processing partners.
- g. Identify your established service levels for system availability.
- h. Describe the system or tools you use to resolve chargebacks.
- i. Describe your local backup or redundant systems.

CUSTOMER SERVICE

- j. Identify the Project Manager that will be assigned to this project. The project manager will be the primary point of contact for the Owner and must be available on an as-needed basis. Describe how the Project Manager will guarantee availability to the Owner during the entire duration of the project.
- k. Identify additional key personnel from your company that will be assigned to this contract, including their current job title and the role they will play in the project.
- l. Provide an organizational chart for your company and include an issue escalation process for problem resolution.
- m. Describe any regular or on-going service or training opportunities and how such service/training is accessed (e.g., online, hosted calls, in-person seminars, etc.)

PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

- n. Describe your PCI DSS Compliance status, program and how you maintain your compliance with PCI standards. Have you been certified as compliant by a third-party assessor?
- o. Describe your role in supporting merchant PCI compliance and how you help the City maintain its compliance.

REPORTING

- p. Describe the daily and monthly reconciliation reports available to the City, as well as the delivery methods and standard delivery time for such reports.
- q. Describe how multiple merchant numbers are reported and the flexibility afforded the City for customizing the reports.
- r. Provide sample statements and reports that would be provided to the City; relative to the needs described by the City in the scope of services (e.g., merchant account statements, etc.) Indicate how these reports are provided to the City (e.g., online, mail, email, etc.)

IMPLEMENTATION & TRAINING

- s. Describe the merchant training process with regard to:
 - Initial new merchant training
 - On-going training
 - Updates and dissemination of industry-related rules or regulatory changes
- t. Identify the specific PCI DSS training provided by your organization to merchants.

V. EVALUATION AND CONTRACT AWARD

1. Preliminary Evaluation

All Proposals shall be evaluated against the same standards. The Proposals will first be reviewed to determine if they contain the required forms, follow the submittal instructions and meet all mandatory requirements. Failure to meet mandatory requirements will result in proposal rejection as non-responsive. In the event that NO Proposer meets specified requirement(s), the Owner reserves the right to continue the evaluation of the proposals and to select the proposal most closely meeting the requirements specified in this RFP, or not select any proposals.

2. Proposer Presentations/Scoring

Based on evaluation of the written proposals by the Evaluation Team on the stated criteria, an estimate of two to four top scoring proposals may be short-listed. Short-listed Proposers may be required to participate in interviews and/or site visits to support and clarify their Proposals if requested by the Evaluation Team. The Evaluation Team will make every reasonable attempt to schedule each presentation at a time and location agreeable to the Proposer. Failure of a Proposer to interview or permit a site visit on the date scheduled may result in rejection of the Proposer's Proposal.

Should the Evaluation Team request any oral presentations or demonstrations from one or more of the short-listed proposers, the Evaluation Team will review the initial scoring and adjust based on the information obtained in the oral presentation or demonstration and site visits and to determine final scoring.

3. Evaluation Criteria

The following are the criteria, which will be used in the selection of a Proposer. A maximum score of 100 points will be used by each evaluator to score Proposals. Each of the following elements shall have the stated maximum point value:

	Criteria	Points
1.	Experience: Card processing, online payments, and the city's financial and utility accounts management software	50
2.	Cost Proposal: Pricing structure and fees, including total estimated annual costs to the City; daily settlement of transactions and deposit turnarounds	25
3.	Data Security	12.50
4.	Customer Service: including but not limited to online and telephone support; reporting services (e.g. online custom reports and statements; transaction search functionality, etc.)	12.50
5.	References – 3	Acceptable/Unacceptable
	TOTAL	100

The cost proposal section shall receive a weighted score, based upon the ratio of the lowest proposal to the highest proposal. The lowest cost Proposal will receive the maximum number of points available for the cost category and other proposals will be scored accordingly.

The points stated above are the maximum amount awarded for each category. The evaluation process is designed to recommend award of this procurement to the proposal that is the best value of the Owner, not necessarily the lowest cost Proposal.

4. Minimum Score/Tied Score

A minimum passing score of 75 (or total combined scores from all Evaluation Committee members averaging 75) is required in order to receive further consideration.

In case of a tied score, recommendation of award will go to the firm who was favored by the majority of the Evaluation Team members, according to their score. The Evaluation Team shall then offer an "Intent to Negotiate and/or Intent to Award" the final contract with the successful Proposer and the decision to accept the award and approve the resulting contract shall be final.

5. RFP Evaluation

Evaluation of proposals shall be based on conformity to the specifications, cost, past experience and performance with the City and other agencies, manufacturers past performance with the City and other agencies, proposed manufacturer's service availability, parts availability, equipment design and functionalism and effect on productivity and bidder's supporting documentation.

6. Award / Best and Final Offers

The Buyer will compile the final scores for all sections of each responsive proposal. The award will be granted in one of two ways. The Evaluation Team's Recommendation of Award may be granted to the highest scoring responsive Proposal and responsible Proposer. Alternatively, Proposers with the highest scoring proposer or proposers may be requested to submit Best and Final Offers. If Best and Final Offers are requested by the Evaluation Team and submitted by the Proposer, they will be evaluated against the stated criteria, scored and ranked by the evaluation committee. The Intent to Negotiate then will be granted to the highest scoring Proposer. However, a Proposer should not expect that the Owner will request a Best and Final Offer.

7. Offer in Effect for Ninety (90) Days

A Proposal may not be modified, withdrawn or canceled by the proposer for a ninety (90) day period following the deadline for proposal submission as defined in the Calendar of Events, or receipt of best and final offer, if required, and Proposer so agrees in submitting the proposal.

8. Notification of Intent to Negotiate/Intent to Award

Proposers will be notified in writing of the Owner's Intent to Negotiate and/or Intent to Award the contract resulting from this RFP.

9. Right to Reject Proposals and Negotiate Contract Terms

The Owner reserves the right to negotiate the terms of the contract, including the award amount, with the selected Proposer prior to entering into a contract. If substantial progress is not made in contract negotiations with the highest scoring Proposer, the Owner may choose to cancel the first Intent to Negotiate and commence negotiations with the next highest scoring Proposer.

10. Protest Procedure

Any protest must be made in writing, signed by the protestor, and state that the Proposer is submitting a formal protest. The protest shall be filed with the City of Yakima Purchasing Division at 129 No. 2nd St., Yakima, WA 98901, or by fax: 509-576-6394 or email to: Purch@yakimawa.gov. The protest shall clearly state the specific factual and legal ground(s) for the protest, and a description of the relief or corrective action being requested. Protests based on specifications/scope of work, or other terms in the RFP shall be filed at least five (5) calendar days before the solicitations due date, and protests based on award or after the award shall be filed no more than five calendar (5) days after Award Announcement (see below for details). The following steps shall be taken in an attempt to resolve the protest with the Proposer:

Step I. Purchasing Division and Division Manager of solicitation try resolving matter with protestor. All available facts will be considered and the Purchasing Manager shall issue a written decision.

Step II. If unresolved, within three (3) business days after receipt of written decision, the protest may be appealed to the Department Head by the Purchasing Division.

Step III. If still unresolved, within three (3) business days after receipt of appeal, the protest may be appealed to the Executive (or his designee). The Executive shall make a final determination in writing to the Protester.

Award Announcement

Purchasing shall announce the successful Proposer via Website, e-mail, fax, regular mail, or by any other appropriate means. Once the Intent to Negotiate is released by Purchasing, the protest time frame begins. The timeframe is not based upon when the Proposer received the information, but rather when the announcement is issued by Purchasing.

Award Regardless of Protest

When a written protest against making an award is received, the award shall not be made until the matter is resolved, unless the Owner determines that one of the following applies:

- The supplies or services to be contracted for are urgently required;
- Delivery or performance will be unduly delayed by failure to make award promptly;
- A prompt award will otherwise be advantageous to the Owner.

If the award is made, regardless of a protest, the award must be documented in the file, explaining the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

The Owner retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

VI. SAMPLE CONTRACT

PROFESSIONAL SERVICES AGREEMENT FOR 12306P MERCHANT SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT, entered into on the date of last execution, between the City of Yakima, a Washington municipal corporation ("City"), and _____, ("Contractor").

WITNESSETH: The parties, in consideration of the terms and conditions herein, do hereby covenant and agree as follows:

1. Scope of Services

The minimum services (hereinafter referred to as "Services") that the Contractor will provide include services described in RFP 12306P Merchant Services, which are attached as Exhibit A hereto and incorporated herein by this reference.

2. Compensation

The City agrees to pay the Contractor according to Exhibit B, attached hereto and incorporated herein, which Exhibit includes the deliverables and payment schedule of itemized prices as listed in the Contractor's Proposal submittal at the time and in the manner and upon the conditions provided for the Contract.

3. Contract Term

The period of this Contract shall be for a period of three (3) years from its effective date. The City may, at its option, extend the Contract for up to two (2) additional years, for a total of five (5) years. Contract extension shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew or unless the Services have been completed to the City's satisfaction prior to any automatic renewal. Contract pricing to remain firm for 18 months from effective date.

4. Agency Relationship between City and Contractor

Contractor shall, at all times, be an independent Contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for, or on, behalf of City.

5. Successors and Assigns

- a. Neither the City, nor the Contractor, shall assign, transfer, or encumber any rights, duties, or interests accruing from this Contract without the prior written consent of the other.
- b. The Contractor for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

6. Property Rights

All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

7. Inspection and Production of Records

- a. The records relating to the Services shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. Contractor's records relating to the Services will be provided to the City upon the City's request.

- b. Contractor shall promptly furnish the City with such information and records which are related to the Services of this Contract as may be requested by the City. Until the expiration of six (6) years after final payment of the compensation payable under this Contract, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, Contractor shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services performed by Contractor under this Contract.
- c. All records relating to Contractor's services under this Contract must be made available to the City, and the records relating to the Services are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to Contractor's services under this Contract must be retained by Contractor for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- d. The terms of this section shall survive any expiration or termination of this Contract.

8. Work Made for Hire

All work the Contractor performs under this Contract shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the Contractor produces in connection with this Contract. On completion or termination of the Contract, the Contractor shall deliver these materials to the City.

9. Compliance with Law

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

Contractor shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.

- a. Procurement of a City Business License. Contractor must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
- b. Contractor must provide proof of a valid Washington department of Revenue state excise tax registration number, as required in Title 85 RCW.
- c. Contractor must provide proof of a valid Washington Unified Business Identification (UBI) number. Contractor must have a current UBI number and not be disqualified from bidding on any public works contract under RCW 39.06.101 or 36.12.065(3).
- d. Contractor must provide proof of a valid Washington Employment Security Department number as required by Title 50 RCW.
- e. Foreign (Non-Washington) Corporations: Although the City does not require foreign corporate proposers to qualify in the City, County or State prior to submitting a proposal, it is specifically understood and agreed that any such corporation will promptly take all necessary measures to become authorized to conduct business in the City of Yakima, at their own expense, without regard to whether such corporation is actually awarded the contract, and in the event that the award is made, prior to conducting any business in the City.

10. Nondiscrimination Provision

During the performance of this Contract, the Contractor agrees as follows:

The Contractor shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, pregnancy, veteran's status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq.).

This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of Services under this Agreement. In the event of the Contractor's noncompliance with the non-discrimination clause of this contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for any future City contracts.

11. Pay Transparency Nondiscrimination Provision:

The Contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

12. Indemnification and Hold Harmless

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

13. Contractor's Liability Insurance

At all times during performance of the Services and this Contract, Contractor shall secure and maintain in effect insurance to protect the City and Contractor from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance

of this Contract. Contractor shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.

Contractor shall provide a Certificate of Insurance to the City as evidence of coverage for each of the policies and outlined herein. A copy of the additional insured endorsement attached to the policy shall be included with the certificate. This Certificate of insurance shall be provided to the City, prior to commencement of work.

Failure of City to demand such verification of coverage with these insurance requirements or failure of City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The following insurance is required:

a. Commercial Liability Insurance

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance and additional insured endorsements as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract.

b. Automobile Liability Insurance

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of automobile liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The business auto liability shall include Hired and Non-Owned coverage if necessary.

c. Employer's Liability (Stop Gap)

Contractor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract. Contractor agrees to assume full liability for all claims arising from this Contract including claims resulting from negligent acts of all subcontractor(s). Contractor is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

d. Professional Liability

The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions. Contractor shall provide the City with a certificate of insurance as proof of professional liability insurance with a

minimum liability limit of Two Million Dollars (\$2,000,000.00) per claim combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claim made basis the coverage will continue in force for an additional two years after the completion of this contract. If insurance is on a claim made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract.

Contractor's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Contract. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by Contractor's insurance.

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

14. Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

15. Contract Documents

This Contract, the Request for Proposals No. 12306P Merchant Services Scope of Services, conditions, addenda, and modifications and Contractor's proposal (to the extent consistent with Yakima City documents) constitute the Contract Documents and are complementary. Specific Federal and State laws and the terms of this Contract, in that order respectively, supersede other inconsistent provisions. These Contract Documents are on file in the Office of the Purchasing Manager, 129 No. 2nd St., Yakima, WA, 98901, and are hereby incorporated by reference into this Contract.

16. Termination

Termination for Cause

In the event the Contractor breaches this Contract, the City may terminate the Contract at its sole discretion in such event that it provides the Contractor with written notice of Contractor's breach and the Contractor fails to cure its breach within 30 days of this notice.

In the event of the City breaches this Contract, the Contractor may terminate the Contract at its sole discretion in such event that it provides the City with written notice of City's breach and the City fails to cure its breach of the Contract within 60 days of this notice. The following represents a non-exclusive, illustrative list of instances that shall be considered a breach by the Contractor:

- a. Defaults on an obligation under the Contract;
- b. Fails to perform any material obligation required under the Contract;
- c. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- d. Allows any final judgment not to be satisfied or a lien not to be disputed after a legally-imposed, 30-day notice;
- e. Makes an assignment for the benefit of creditors;
- f. Fails to follow the sales and use tax certification requirements of the State of Washington;
- g. Incurs a delinquent Washington tax liability;
- h. Becomes a State or Federally debarred Contractor;
- i. Is excluded from federal procurement and non-procurement Contracts;
- j. Fails to maintain and keep in force all required insurance, permits and licenses as provided in the Contract;

- k. Fails to maintain the confidentiality of the City information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information;
- l. Contractor performance threatens the health or safety of a City, County or municipal employee; or

Termination for Convenience

The City may terminate the Contract, without cause, by providing 30 days written notice of termination.

In the event of termination for convenience, the Contractor shall be entitled to receive compensation for any fees owed under the Contract. The Contractor shall also be compensated for partially completed services. In this event, compensation for such partially completed services shall be no more than the percentage of completion of the services requested, at the sole discretion of the City, multiplied by the corresponding payment for completion of such services as set forth in the Contract. Alternatively, at the sole discretion of the City, the Contractor may be compensated for the actual service hours provided. The City shall be entitled to a refund for goods or services paid for but not received or implemented, such refund to be paid within 30 days of written notice to the Contractor requesting the refund.

Change in Funding

In addition to the above termination provisions, if the funds upon which the City relied to establish this Contract are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, the City may terminate this Contract by providing at least five business days written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.

17. Dispute Resolution

In the event that any dispute shall arise as to the interpretation of this agreement, or in the event of a notice of default as to whether such default does constitute a breach of the contract, and if the parties hereto cannot mutually settle such differences, then the parties shall first pursue mediation as a means to resolve the dispute. If the afore mentioned methods are either not successful then any dispute relating to this Agreement shall be decided in the courts of Yakima County, in accordance with the laws of Washington. If both parties consent in writing, other available means of dispute resolution may be implemented.

18. Re-Award

When the contract is terminated by the Contractor upon providing the written notice as herein required, the City, pursuant to City ordinance, may re-award the contract to the next most responsible Proposer within 120 days from original award.

When a Contractor is unable to supply goods and/or services to the City and is in breach of the contract, or when the contract is terminated by the City for cause as herein provided, the City reserves the right to re-award the contract to the next most responsible Proposer within 120 days from original award.

19. Substitution

The Contractor shall not substitute or deviate from said specifications of this Contract without a written amendment, signed by the City Manager, or pursuant to Section 51 below entitled "Change or Notice". Any violation of this procedure by the Contractor will be considered cause for immediate cancellation of the Contract for cause by the City.

20. Contractor Shall Furnish

Except as otherwise specifically provided in this Contract, Contractor shall furnish the following, all as the same may be required to perform and provide the services in accordance with the terms of this Contract: personnel, labor, products and supervision; and technical, professional and other services. All such services, products, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by Contractor under this Contract are sometime collectively referred to in this Contract as the "(Services)."

21. Complementary Provisions

All provisions of this Contract are intended to be complementary, and any services required by one and not mentioned in another shall be performed to the same extent as though required by all. Details of the services that are not necessary to carry out the intent of this

Contract, but that are not expressly required, shall be performed or furnished by Contractor as part of the services, without any increase in the compensation otherwise payable under this Contract.

22. Invoices

The City will use its best efforts to pay each of Contractor's invoices within thirty (30) days after the City's receipt and verification thereof; provided, however, that all such payments are expressly conditioned upon Contractor providing services hereunder that are satisfactory to the City. The City will notify the Contractor promptly if any problems are noted with the invoice. To insure prompt payment, each invoice should cite purchase order number, RFP number, detailed description of work, unit and total price, discount term and include the Contractor's name and return remittance address. Invoices will be electronically sent and the city shall be able to send notification to several people. Payment will be made via direct draft from the designated city bank account.

23. Prime Contractor

Contractor is the Prime Contractor hereunder. The Prime Contractor shall be the sole point of contact with regard to all contractual matters arising hereunder, including the performance of services and the payment of any and all charges resulting from its contractual obligations.

24. Delegation of Professional Services

The services provided for herein shall be performed by Contractor, and no person other than regular associates or employees of Contractor shall be engaged on such work or services. Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any services to any other person or entity without the prior written consent of the City. Any such delegation or subcontracting without the City's prior written consent shall be voidable at the City's option.

No delegation of subcontracting of performance of any of the services, with or without the City's prior written consent, shall relieve Contractor of its responsibility to perform the services in accordance with this Contract. Contractor shall be fully responsible for the performance, acts and omissions of Contractor's employees, Contractor's subcontractors, and any other person who performs or furnishes any services (collectively, the "Support").

Contractor shall at all times be an independent contractor and not an agent or representative of the City with regard to performance of the services. Contractor shall not represent that it is, nor hold itself out as, an agent or representative of the City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of the City. Neither the Contractor nor any employee of the Contractor is entitled to any benefits that the City provides its employees. The Contractor is solely responsible for payment of any statutory workers compensation or employer's liability insurance as required by state law. The Contractor will have an active account with the Department of Revenue, other state agencies as needed, and a separate set of books or records that reflect all items of income and expenses of the business that the Contractor is conducting.

Contractor shall perform the services in a timely manner and in accordance with the standards of the profession. At the time of performance, Contractor shall be properly licensed, equipped, organized, and financed to perform the services in accordance with this Contract. Subject to compliance with the requirements of this Contract, Contractor shall perform the services in accordance with its own methods.

25. Licenses

If applicable, Contractor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

In addition, Contractors are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the bid/RFP/quote.

Contractor shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the services.

26. Removal of Subcontractor

If dissatisfied with the background, performance, and/or general methodologies of any subcontractor, the City may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work/services under this Contract.

27. Taxes and Assessments

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

The City and its agencies are exempt from payment of all federal excise taxes, but not sales tax (currently at 8.3%). Tax will not be considered in determining which proposal is the lowest or best, however RCW 39.30.040 allows the City to take any sales tax and B&O tax that it will receive from purchasing supplies, materials and equipment within its boundaries into consideration when determining the lowest responsible Proposer.

28. Contractor Tax Delinquency

Contractors who have a delinquent Washington tax liability may have their payments offset by the State of Washington.

29. Inspection: Examination of Records

The Contractor agrees to furnish the City with reasonable periodic reports and documents as it may request and in such form as the City requires pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith, and any other matter are to be covered by this Agreement.

The records relating to the services shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

30. Recordkeeping and Record Retention

The Contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.

The City shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this proposal held by the Contractor. The Contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

31. Confidential, Proprietary and Personally Identifiable Information

Contractor shall not use Confidential, Proprietary or Personally Identifiable Information of City for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations there under. Contractor shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the City in

writing, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the City, as directed.

Contractor shall maintain all Confidential Information as confidential for a period of three (3) years from the date of termination of this Contract, and shall return or destroy said Confidential Information as directed by the City in writing.

Contractor may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent such disclosure is required under law or a court order, provided that the City shall be given prompt written notice of such proceeding if giving such notice is legally permissible.

32. Suspension of Work

The City may suspend, in writing by certified mail, all or a portion of the Service under this Agreement if unforeseen circumstances beyond the City's control are interfering with normal progress of the Service. The Contractor may suspend, in writing by certified mail, all or a portion of the Service under this Agreement if unforeseen circumstances beyond Contractor's control are interfering with normal progress of the Service. The Contractor may suspend Service on the Project in the event the City does not pay invoices when due, except where otherwise provided by this Agreement. The time for completion of the Service shall be extended by the number of days the Service is suspended. If the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to renegotiation, and both parties are granted the option to terminate the Service on the suspended portion of Project in accordance with Section 16.

33. Provision of Services

The Contractor shall provide the services set forth herein with all due skill, care, and diligence, in accordance with accepted industry practices, standards and legal requirements, and to the City's satisfaction; the City decision in that regard shall be final and conclusive. The City may inspect, observe and examine the performance of the services performed on the City premises at any time. The City may inspect, observe and examine the performance of Contractor's services at reasonable times, without notice, at any other premises.

- a. If the City notifies the Contractor that any part of the services rendered are inadequate or in any way differ from the Contract requirements for any reason, other than as a result of the City's default or negligence, the Contractor shall, at its own expense, reschedule and perform the services correctly within such reasonable time as the City specifies. This remedy shall be in addition to any other remedies available to the City by law or in equity.
- b. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its subcontractors perform the services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and City work rules.

34. Assignment

This Contract, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Contractor to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Contractor stated herein.

35. No Conflict of Interest

Contractor represents that it or its employees do not have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that it will not hire anyone or any entity having such a conflict of interest during the performance of this Contract.

36. Contract Preservation

If any provision of the Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

37. Promotional Advertising / News Releases

Reference to or use of the City, any of its departments, agencies or other subunits, or any official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

38. Time is of the Essence

Timely provision of the services required under this Contract shall be of the essence of the Contract, including the provision of the services within the time agreed or on a date specified herein.

39. Expansion clause

Any resultant contract may be further expanded by the Purchasing Manager in writing to include any other item normally offered by the Contractor, as long as the price of such additional products is based on the same cost/profit formula as the listed item/service. At any time during the term of this contract, other City departments may be added to this contract, if both parties agree.

40. Patent Infringement

The contractor selling to the City the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the City (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

41. Warranty

Unless otherwise specifically stated by the Proposer, Contractor warrants that all goods and/or services furnished under this contract are warranted against defects by the Proposer for one (1) year from date of receipt, are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Contractor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Contractor's warranties (and any more favorable warranties, service policies, or similar undertaking of Contractor) shall survive delivery, inspection, and acceptance of the goods or services.

42. Access and Review of Contractor's Facilities

The City may visit and view any of the offices, premises, facilities and vehicles of the Contractor and/or Contractor's Subcontractor upon request and reasonable notice during the term of the Contract and Contract renewals/extensions.

43. Facility Security

The City may prohibit entry to any secure facility, or remove from the facility, a Contract employee who does not perform his/her duties in a professional manner, or who violates the secure facility's security rules and procedures. The City reserves the right to search any person, property, or article entering its facilities.

44. Waiver of Breach

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Contract 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 Contract, 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.

45. Integration

This Contract, along with the City of Yakima's RFP 12306P Merchant Services and the Contractor's response to the Request for Proposals ("RFP"), represents the entire understanding of the City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Contract may not be modified or altered except in writing signed by both parties.

46. Force Majeure

Contractor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, pandemics, war, riot, delay in transportation or railcar transport shortages, provided Contractor notifies the City immediately in writing of such pending or actual delay.

Normally, in the event or any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

47. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

48. Venue

The venue for any judicial action to enforce or interpret this Contract shall lie in a court of competent jurisdiction in Yakima County, Washington.

49. Authority

The person executing this Contract, on behalf of Contractor, represents and warrants that he/she has been fully authorized by Contractor to execute this Contract on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Contract.

50. Notice of Change in Financial Condition

If, during the Contract Term, the Contractor experiences a change in its financial condition that may affect its ability to perform under the Contract, or experiences a change of ownership or control, the Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change of ownership or control shall be sufficient grounds for Contract termination.

51. Change or Notice

Any alterations, including changes to the nature of the service, made to the Contract shall be rendered in writing and signed by both responsible parties; no changes without such signed documentation shall be valid. No alterations outside of the general scope and intent of the original Request for Proposals or in excess of allowable and accepted price changes shall be made.

In no event shall the Contractor be paid or be entitled to payment for services that are not authorized herein or any properly executed amendment.

Notice of Business Changes: Contractor shall notify the City in writing within three (3) business days of any change in ownership of the facilities of the Contractor or of the facilities of any subcontractor. The Contractor shall notify the City in writing as soon as possible, and in no event later than three (3) business days, after any decision by the Contractor to change or discontinue service that will affect services provided to the City under this Contract.

The City shall have the right to renegotiate the terms and conditions of this Contract to the extent required to accommodate a change in governing law or policy that, in the sole discretion of the City, either substantially and unreasonably enlarges the Contractor’s duties hereunder, or renders performance, enforcement or compliance with the totality of the Contract impossible, patently unreasonable, or unnecessary. Notices and demands under and related to this Contract shall be in writing and sent to the parties at their addresses as follows:

TO CITY:	COPY TO:	TO CONTRACTOR:
James Dean	Christina Payer	_____
Utility Customer Service Manager	Buyer II	_____
City of Yakima	City of Yakima	_____
129 North 2 nd Street	129 North 2 nd Street	_____
Yakima WA, 98901	Yakima, WA 98901	_____

52. Survival

The foregoing sections of this Contract, 1-51 inclusive, shall survive the expiration or termination of this Contract in accordance with their terms.

IN WITNESS WHEREOF, the parties hereto execute this Contract as of the day and year first above written.

CITY OF YAKIMA

CONTRACTOR NAME

City Manager

Date: _____

By: _____

Date: _____

Attest:

(Print name)

City Clerk

EXHIBIT A

RFP SPECIFICATIONS

EXHIBIT B

COST PROPOSAL (COMPENSATION)