14. RESOLUTION NO. R-3-12

A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF PULLMAN AND DESIGN WEST ARCHITECTS, P.A. FOR THE WELL 5 CHLORINATION UPGRADE PROJECT.

NOTES:

REQUEST FOR COUNCIL ACTION

For Meeting of: 01/10/12

ACTION REQUESTED:

Authorize a professional services agreement with Design West Architects for the Well 5 Chlorination Upgrade project.

BACKGROUND:

Well 5, located at the intersection of Grand Avenue and Fairmount Drive, is the last water facility that still uses high-strength chlorine disinfection. The Well 5 Chlorination Upgrade project will replace this existing system with an on-site hypochlorite generator and injection system. The new system will provide a safer environment for employees, reduce operational expenses, and provide better chemical mixing with delivered potable water. To prepare contract documents and to provide assistance during bidding and construction, a professional services agreement has been negotiated with Design West Architects. The budget for this professional work is $29,800.00 with compensation to be made on a cost-reimbursable basis. Funding for this project will be from a Utility Capital Projects budget of the Utility Fund.

RECOMMENDATION:

Adopt the attached resolution authorizing the execution of a professional services agreement with Design West Architects for the Well 5 Chlorination Upgrade project.

FISCAL IMPACT:

$29,800.00

403.3348.594.34.41.10

BARS Code Number

SUBMITTED BY:

Name Mark Workman
Title Public Works Director
Dept. Public Works

ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

1. Resolution No. R-3-12

REVIEWED BY:

	Initial	Date
Department Head	MW	12/23/11
City Supervisor	JOB	1-6-12
City Attorney (As to Form)	MK	12-27-11

RESOLUTION NO. R- 3 -12

A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF PULLMAN AND DESIGN WEST ARCHITECTS, P.A. FOR THE WELL 5 CHLORINATION UPGRADE PROJECT.

WHEREAS, the City Council for the city of Pullman has before it an Agreement entitled Professional Services Agreement which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the city of Pullman to authorize the execution of said Agreement; now, therefore,

IT IS HEREBY RESOLVED that the Mayor and the finance director be and they are hereby authorized and directed to execute the Agreement attached hereto and marked as Exhibit "A" and to deliver an executed original thereof to Design West Architects, P.A.

IT IS FURTHER RESOLVED that the Mayor and finance director are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Agreement authorized thereby.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the _____ day of _____, 2012.

DATED this _____ day of _____, 2012.

_____
Mayor Glenn A. Johnson

ATTEST:

_____
Finance Director
William F. Mulholland

Approved as to Form:

_____
City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this _____ day of _____, 2012, by and between the CITY OF PULLMAN, WASHINGTON, whose address is 325 SE Paradise Street, Pullman, WA 99163, hereinafter called the "CITY," and the consulting firm of DESIGN WEST ARCHITECTS, P.A., whose address is 254 E. Main Street, Pullman, WA 99163, the location at which work will be available for inspection, hereinafter called the "CONSULTANT." The contact person for the CITY shall be Mark D. Workman, P.E. The contact person for the CONSULTANT shall be Ned Warnick, AIA.

WHEREAS, the CITY desires to design and construct chlorination improvements at Well 5; and

WHEREAS, the CONSULTANT has represented and by entering into this Agreement now represents, that CONSULTANT is in full compliance with the statutes of the State of Washington for registration of professional architects and that all personnel to be assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned in a competent and professional manner; and

WHEREAS, the CONSULTANT desires to do the work set forth in the Agreement upon the terms and conditions set forth below,

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

SECTION I: OBJECTIVES AND SCOPE OF WORK

The objectives of this project are to provide analysis and schematic design, design development, construction document preparation, services during bidding, and services during construction for the Well 5 Chlorination Upgrade project. The scope of services to be performed by the CONSULTANT is as indicated in the attached Exhibit A.

During the project execution, the CONSULTANT shall provide supporting information as may be pertinent and necessary, or as may be requested by the CITY, in order for the CITY to pass critical judgment on the design features of the project. The CONSULTANT shall make such minor changes, amendments, or revisions in the details of the work as may be required by the CITY provided that they are within the scope of work and are requested prior to final review by the CITY. This item does not constitute an "Extra Work" item as related in Section VIII of this Agreement. When alternates are being considered, the CITY shall have the right of selection.

The adequacy of the design shall be verified by a senior review by the CONSULTANT. The CONSULTANT will be held responsible for the accuracy of the work, consistent with Section XV of this Agreement.

SECTION II: ITEMS TO BE FURNISHED TO THE CONSULTANT BY THE CITY

The CITY will furnish the CONSULTANT Miox system and process piping background drawings as well as any requested drawings, data, and reports on file which may relate to the project.

SECTION III: DOCUMENTS TO BE FURNISHED BY THE CONSULTANT

The following documents, exhibits or other presentations for the work covered by this Agreement shall be furnished by the CONSULTANT to the CITY upon completion of the work specified in Section I. All such material shall become and remain the property of the CITY and may be used by it without restriction other than as described in Section XXII, Reuse of Project Documents.

- ► 50% plans and cost estimate for review
- ► 90% plans, specifications in AIA format, and cost estimate for review
- ► 100% plans in AutoCAD and one archive-quality, stamped, ink on mylar set
- ► 100% project manual including frontal documents and technical specifications
- ► 100% cost estimate

SECTION IV: TIME OF BEGINNING AND COMPLETION

The CONSULTANT shall not begin work under the terms of this Agreement until authorized in writing by the CITY. 100% contract documents shall be completed within 120 calendar days after receipt of authorization to proceed. The CITY shall review preliminary documents and provide comments in a timely manner so as not to delay progress on the project.

SECTION V: PAYMENT

The CONSULTANT shall be paid by the CITY for completed work or services rendered under this Agreement as provided for hereinafter. 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 work.

1. Payment for all consulting services for this project shall be on a cost-reimbursable basis with a not-to-exceed amount of $29,800.

   The maximum amount payable by the CITY to the CONSULTANT under this Agreement shall not exceed said not-to-exceed amount unless a supplemental agreement has been negotiated and executed in writing by the CITY prior to incurring any costs in excess of the not-to-exceed amount.

2. Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, but are not to be more frequent than one (1) per month. Each payment request shall be accompanied by a spreadsheet showing a list of all tasks, their original budget amount, cost incurred through the invoice date, estimated remaining costs, and estimated total costs through completion. A short narrative or remark column shall be included. Any problems and potential causes for delay shall be noted. Failure to note any reasons for delay shall constitute a waiver of claims for delay to the date of the payment request. Payments to the CONSULTANT will be made within 30 days of receipt of the payment request.

3. Final payment of any balance due the CONSULTANT of the ultimate gross amount earned will be made promptly upon ascertainment and verification by the CITY of the satisfactory completion of the work under this Agreement and its acceptance by the CITY and the receipt of documents which are to be furnished under this Agreement.

4. Each payment by the CITY shall constitute full payment for labor, materials, supplies, equipment and incidentals to the date of CONSULTANT'S partial payment request. CONSULTANT'S acceptance of payment constitutes a waiver of any claims for payment not included in the partial payment request.

5. Payment for extra work performed under this Agreement shall be paid as agreed to by the parties hereto in writing at the time extra work is authorized.

SECTION VI: EMPLOYMENT

The CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Any and all employees of the CONSULTANT, while engaged in the performance of any work or services required by the CONSULTANT under this Agreement, shall be considered employees of the CONSULTANT only and not of the CITY and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the CITY.

SECTION VII: NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age, handicap, or sexual orientation except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this Agreement may be terminated by the CITY and further that the CONSULTANT shall be barred from performing any services for the CITY now or in the future unless a showing is made satisfactory to the CITY that discriminatory practices have terminated and that recurrence of such action is unlikely.

SECTION VIII: CHANGES IN WORK

The CONSULTANT shall make such revisions in the work included in this Agreement as are necessary to correct errors or omissions appearing therein, when required to do so by the CITY, without additional compensation.

Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof revised, other than minor revisions within the scope of the work, the CONSULTANT shall make such revisions, if requested and as directed by the CITY in writing. This work shall be considered as Extra Work and will be paid for as provided in Section V. All extra work shall be submitted as a supplement to the basic agreement and approved by the CITY Director of Public Works in writing before the work is undertaken. Said supplement may also extend the time for completion as agreed upon by the CITY and the CONSULTANT.

SECTION IX: TERMINATION OF AGREEMENT

1. The CITY reserves the right to terminate this Agreement at any time upon not less than ten (10) days written notice to the CONSULTANT.

2. In the event this Agreement is terminated under any of its terms prior to completion of the work, a final payment shall be made to the CONSULTANT commensurate with the amount of work completed to the date of termination. The CITY is authorized to offset or deduct from any sums due the CONSULTANT any actual charges incurred by the CITY for the default of the CONSULTANT.

3. In the event this Agreement is terminated prior to completion of the work, the original copies of all plans, prints, drawings and field notes prepared by the CONSULTANT prior to termination shall become the property of the CITY.

4. Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of this Agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the CITY. Forbearance of any rights under the Agreement will not constitute waiver of the entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

SECTION X: DISPUTES

Any dispute concerning questions of facts in connection with work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for determination to the Director of Public Works, whose decision in the matter shall be final and binding on the parties of this Agreement, provided, however, that if an action is brought challenging the Director of Public Works' decision, that decision shall be subject to de novo judicial review.

SECTION XI: INDEMNITY

CONSULTANT agrees to indemnify CITY from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CONSULTANT, CONSULTANT's employees, affiliated corporations, and subconsultants in connection with the project.

CITY agrees to indemnify CONSULTANT from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CITY or its employees in connection with the project.

SECTION XII: SUBLETTING OR ASSIGNING OF CONTRACTS

The CONSULTANT shall not sublet or assign any of the work covered by this Agreement without the written consent of the CITY. The CITY expects that the CONSULTANT will make reasonable attempts to keep the same personnel on this project as identified in the project proposal letter.

SECTION XIII: ENDORSEMENT OF PLANS

The CONSULTANT shall place CONSULTANT'S endorsement on all reports, plans, estimates or any other engineering data furnished by CONSULTANT.

SECTION XIV: INTEREST

If payment of the amounts due, or any portion thereof, is not made as prescribed above, interest on the unpaid balance thereof will occur at the rate of one-half percent (1/2%) per month and become due and payable at the time said overdue payments are made, unless delay in payment is due to improper, contested, or inadequate billing procedures followed by the CONSULTANT. In the event of disputed or contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with the payment provision outlined herein. The CITY shall exercise reasonableness in contesting any bill or portion thereof. Where usury limits are less than the stated interest rate above, the maximum lawful interest rate shall apply to the unpaid balance.

SECTION XV: STANDARD OF CARE

The standard of care applicable to the CONSULTANT'S services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services. The CONSULTANT will re-perform any services not meeting this standard without additional compensation.

SECTION XVI: SUBSURFACE INVESTIGATIONS

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may

vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

SECTION XVII: OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedules. Therefore, the CONSULTANT makes no warranty that the CITY'S actual project costs, financial aspects, economic feasibility or schedules will not vary from the CONSULTANT'S opinions, analyses, projections, or estimates.

SECTION XVIII: ACCESS TO CONSULTANT'S ACCOUNTING RECORDS

The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to the CITY during the CONSULTANT'S normal business hours for a period of one year after the CONSULTANT'S final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may only audit accounting records applicable to cost-reimbursable type compensation.

SECTION XIX: CONSULTANT'S 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, or employees.

CONSULTANT'S maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.

1. **Minimum Scope of Insurance**

   CONSULTANT shall obtain insurance of the types described below:

   A. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
   B. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an

insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the CITY.

C. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
D. Professional Liability insurance appropriate to the Architectural profession.

2. Minimum Amounts of Insurance

CONSULTANT shall maintain the following insurance limits:

A. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.
B. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.
C. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

3. Other Insurance Provisions

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 with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute with it.

4. Acceptability of Insurers

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

5. Verification of Coverage

CONSULTANT shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the CONSULTANT before commencement of the work.

6. Notice of Cancellation

The CONSULTANT shall provide the CITY with written notice of any policy cancellation, within two business days of its receipt of such notice.

7. Failure to Maintain Insurance

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

SECTION XX: OWNER-FURNISHED DATA

CONSULTANT will reasonably rely upon the timeliness, accuracy, and completeness of the information provided by the CITY.

SECTION XXI: LITIGATION ASSISTANCE

The scope of services does not include costs of the CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. All such services required or requested of the CONSULTANT by the CITY, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed, unless and until there is a finding by a court or arbitrator that the CONSULTANT'S negligence caused the CITY'S damage.

SECTION XXII: REUSE OF PROJECT DOCUMENTS

All designs, drawings, specifications, documents, and other work products of the CONSULTANT are instruments of service for this project, whether the project is completed or not. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service based on facts or circumstances not contemplated in the original work, without the written permission of the CONSULTANT, will be at the CITY'S sole risk. The CITY agrees to indemnify and defend the CONSULTANT from all claims, damages, losses, and expenses, including, but not limited to, direct, indirect, or consequential damages and attorney's fees, arising out of or related to such unauthorized reuse.

SECTION XXIII: FORCE MAJEURE

The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

SECTION XXIV: SUSPENSION, DELAY, OR INTERRUPTION OF WORK

The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of force majeure or such suspension, delay, or interruption, an equitable adjustment in the project's schedule, commitment and cost of the CONSULTANT'S personnel and subconsultants, and the CONSULTANT'S compensation may be made if warranted.

SECTION XXV: NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than the CITY and the CONSULTANT and has no third-party beneficiaries.

SECTION XXVI: JURISDICTION, VENUE AND APPLICABLE LAW

The law of the state of Washington shall govern the validity of this Agreement, its interpretation and

performance, and any other claims related to it. The CONSULTANT consents to personal jurisdiction and venue shall be in the courts of Whitman County, Washington.

SECTION XXVII: COMPLETE AGREEMENT

This document and referenced attachments contain all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Agreement.

SECTION XXVIII: SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONSULTANT:
Design West Architects, P.A.

By: Laurence C Rose

Title: VP

Date: 12.22.11

CITY:
City of Pullman, a municipal corporation
of the State of Washington

By: _____
Mayor

Date: _____

ATTEST:

By: _____
Finance Director

Exhibit A

The scope of services to be provided by CONSULTANT, budget, and billing rates for the Well 5 Chlorination Upgrade project are as detailed in the attached proposal letter.

DESIGN WEST

December 15, 2011

Mark Workman, Public Works Director
City of Pullman
325 SE Paradise Street
Pullman, WA 99163

RE: **Architectural & Engineering Proposal**
Proposed Improvements to Pullman Well House #5 (revised)

Dear Mark,

Thank you for considering Design West Architects and our associated design team for providing design services for the proposed improvements to the Pullman Well House #5 Building. We are familiar with the project from our previous discussions and meetings. In very broad terms the project will consist of selected demolition and renovation of the existing 240 square foot chlorine room to accommodate a new MIOX treatment system, along with new electrical MCC gear. The project will also include some minor amount of site development work related to the project.

Services:

Design West Architects will utilize the following consultants for the work on this project:

Structural	Dave Golden – Structural Forte
Mechanical	Mike Lippis – Northwest Engineering
Electrical	Tyler Spence – Trindera Engineering

This design team proposes to provide architectural and engineering services for the project described above, in conjunction with the city providing MIOX system and process piping background drawings. The services will include Architectural, Structural, Mechanical, and Electrical Engineering disciplines. The scope/fee does not include any consultant firm for civil engineering. Should this specialty be required by the results of the design phase, this consultant's fee will be negotiated as an add service at that time. Our services will be provided under the basic provisions and conditions contained within a standard City of Pullman Professional Services Agreement.

Compensation:

Compensation for the basic services shall be on the basis of time and materials (reimbursable expenses), not-to-exceed the total amount defined below. The fee is broken down by phase as follows:

Analysis & Schematic Design Phase	$ 2,900
Design Development Phase	$ 5,600
Construction Document Preparation	$ 10,900
Bidding & Negotiation	$ 1,500
Construction Administration	$ 6,900
Total compensation all phases	$ 27,800

The fee would be invoiced monthly, based upon the actual hours of service and reimbursable expenses spent to that date. Reimbursable expenses, in addition to the compensation for professional services listed above will be billed as provided for in the standard agreement. For budgeting purposes the reimbursable expenses are not anticipated to exceed $2,000. Please note that reimbursable expenses shall be billed at cost + 10%.

PULLMAN, WASHINGTON
KENNEWICK, WASHINGTON
MERIDIAN, IDAHO

DESIGN WEST
ARCHITECTS, P.A.

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