

AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board
Yakima County Commissioners' Office, Room 232**

Prepared by:
Brian Griff, Director

Department: Facilities Services

Requested Agenda Date: May 26, 2020

Presenting: Brian Griff

Board of County Commissioners Board Assigned

121 - 2020

Yakima County, WA

APPROVED FOR AGENDA:

Consent Regular

Board of County Commissioners Determined

Document Title:
Execute contract with M.G. Wagner Co., Inc., 1401 Hathaway, Yakima, WA 98901 to install a 60mil mechanically attached TPO roof system located at the Yakima County Facilities Services Building.

Action Requested: *Check Applicable Box*

PASS RESOLUTION EXECUTE or AMEND AGREEMENT CONTRACT or GRANT

ISSUE PROCLAMATION PASS ORDINANCE OTHER _____

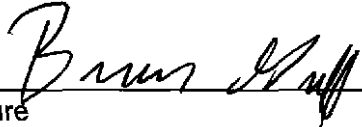
Describe Fiscal Impact:
The contract sum shall be \$37,781.54 including WSS1.

Background Information:
The roof on the Facilities Services building is at end of life and needs to be replaced. The roof has leaks throughout the entire facility.

Summary & Recommendation:
Director of Facilities Services recommends execution of contract to lowest bidder M.G. Wagner Co., Inc.

Motion:
Execute contract.

Department Head/ Elected Official


Signature

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial D.C.

Late Agenda Requests Require BOCC Chairman Signature:

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Yakima County, WA

PUBLIC WORKS CONTRACT

THIS AGREEMENT is made this day between Yakima County, a Washington municipal corporation (hereinafter referred to as the "County") and **M.G. WAGNER CO., INC.**, a licensed contractor registered with the State of Washington under license number **MGWAGCI141QG** and WA UBI number **397 017 132** (hereinafter referred to as "Contractor"). The County and Contractor hereby agree as follows:

SECTION 1. PURPOSE

Contractor was selected from the small work roster maintained by the County to perform certain public work for the County. The purpose of this agreement is to set forth the scope of project, compensation, scheduling, insurance and other items as set forth below.

SECTION 2. THE CONTRACT DOCUMENTS

The Contract Documents consist of this agreement, the bid proposal, addenda issued prior to execution of this agreement, and change orders issued after execution of this agreement. The Contract Documents constitute the contract and are as fully a part of the contract as if attached to this agreement or repeated herein, and represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations or agreement, either written or oral.

SECTION 3. THE WORK OF THIS CONTRACT

The Contractor shall fully execute the work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

The scope of work shall include furnishing all labor, equipment and materials necessary to perform the work as follows: **Install a 60mil mechanically attached TPO roof system located at the Yakima County Facilities Services Building in accordance with the attached proposal.**

SECTION 4. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1. The date of commencement of the work shall be fixed in letters of notice to proceed from the County.
- 4.2. The contract time shall be measured from the date of Notice to Proceed.
- 4.3. The contract time shall be 30 working days, subject to the adjustments of this contract time as provided by mutual agreement of the parties which agreement shall not be unreasonably withheld.

SECTION 5. THE CONTRACT SUM

The County shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the contract. The Contract Sum shall be **thirty-seven thousand seven hundred eighty-one dollars and fifty-four cents** including Washington State Sales Tax, **(\$37,781.54 Including WSST).**

SECTION 6. PROGRESS PAYMENTS

Should the time of performance of this agreement exceed 30 days, the Contractor shall be entitled to a progress payment once monthly based on work completed less prior payments.

SECTION 7. RETAINAGE

7.1. X This project meets the requirements of RCW 39.04.155(3), Limited Public Works Process, and is not subject to retainage as required by RCW Chapter 60.28.

OR

7.2. ___ This project is subject to retainage Pursuant to RCW 60.28, a sum of 5-percent of the monies earned by the Contractor will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any person arising under the Contract. Monies retained under the provisions of RCW 60.28 shall, at the option of the Contractor, be:

7.2.1. Retained in a fund by the County, or

7.2.2. Deposited by the County in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the County and are not to be allowed to be withdrawn without the County's written authorization. The County will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Contractor as the interest accrues. At the time the Contract is executed the Contractor shall designate the option desired. The Contractor in choosing option (2) agrees to assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. The County may also, at its option, accept a bond in lieu of retainage.

7.2.3. Release of the retainage will be made 60-days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28) provided the following conditions are met:

6.2.3.1. On Contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.

6.2.3.2. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the County (RCW 39.12.040).

6.2.3.3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.

6.2.3.4. Washington State Department of Labor and Industries shows the Contractor is current with payments of industrial insurance and medical aid premiums.

6.2.3.5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the County sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

SECTION 8. FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the contract except for the Contractor's responsibility to correct any defective work as determined by the County, and to satisfy other requirements, if any, which extend beyond final payment.

SECTION 9. NOTICE

Any notice required under this agreement shall be made by first class United States mail, to:

Yakima County:

Yakima County Facilities Services
Attn: Brian Griff
18 East Lincoln Ave
Yakima, WA 98901

Contractor:

M.G. Wagner Co., Inc.
Attn: Ric Fernandez
1401 Hathaway
Yakima, WA 98909

SECTION 10. TERMINATION

- 10.1. Either party may terminate this Agreement by providing thirty (30) calendar days written notice sent by certified mail to the addresses listed in Section 9.
- 10.2. If the Contractor fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Agreement.
- 10.3. If this Agreement is terminated for any reason, County shall pay only for performance rendered or costs incurred in accordance with the terms of this Agreement and prior to the effective date of termination.

SECTION 11. BONDS AND INSURANCE

- 11.1. A performance bond in the amount of \$ N/A shall be posted by the contractor on this contract.
- 11.2. If the performance bond and retainage is waived, the county retains the right of recovery against the contractor for any payments made on the contractors' behalf.
- 11.3. At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the contractor or its insurer(s) to Yakima County. The requirements contained herein, as well as Yakima County'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.
 - 11.3.1. Commercial General Liability insurance at a limit of liability not less than \$2,000,000 Each Occurrence, and \$5,000,000 General Aggregate. Insurance shall be written on ISO occurrence form CG 00 01 or an alternate form providing equal or broader liability coverage. Such coverage shall not contain any endorsement(s) excluding or limiting Products Completed, Operations, or Contractual Liability Cross Liability. Yakima

County, its officers, employees, agents, and volunteers shall be named as Additional Insureds under the coverage with respect to the work performed under this agreement.

- 11.3.2. Business Automobile Liability insurance at a combined single limit of liability for bodily injury and property damage not less than \$1,000,000 Each Occurrence covering all Owned, Non-owned, Hired, and leased automobiles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equal or broader liability coverage. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 11.3.3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- 11.4. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:
 - 11.4.1. The Contractors' insurance coverage shall be primary insurance as respects those who are Additional Insureds under this agreement. Any insurance, self-insurance or insurance pool coverage maintained by the County shall be in excess of the Contractor's insurance and shall not contribute to it.
 - 11.4.2. The Contractor's insurance shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.
- 11.5. Verification of Coverage. Prior to execution of this agreement, Contractor shall furnish the County with original Certificates of Insurance and a copy of any amendatory endorsement, including without limitation, the Additional Insured endorsement, evidencing the insurance requirements.

SECTION 12. INDEMNIFICATION

- 12.1. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold the County and its officers, officials, employees, agents, and volunteers harmless from and against all claims, damages, losses, or expenses including without limitation attorney fees, court costs, or other alternate dispute resolution costs arising out of or resulting from the performance of work under this Agreement, provided that any such claims, damages, losses or expenses are attributable to bodily injury, sickness, disease, death, personal injury, or property damage caused in whole or in part by the negligent acts, errors, or omissions of Contractor, Contractor's subcontractors, anyone directly or indirectly employed or hired by Contractor, or anyone for whose acts Contractor may be liable.
- 12.2. Contractor's Waiver of Employer's Immunity under Title 51 RCW. Contractor intends that its indemnification, defense, and hold harmless obligations set forth in this contract shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, with respect to any action brought by any employee of

the Contractor against the County and its officers, employees, agents, and volunteers, Contractor specifically and to the fullest extent allowed by law waives any immunity granted under Title 51 RCW. The parties have mutually negotiated this waiver. Contractor shall similarly 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 to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, respect to any action brought by any employee of the subcontractor against the County or any of its officers, employees, agents, and volunteers. The provisions of this section shall survive the expiration or termination of this Agreement.

- 12.3. 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 County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.
- 12.4. A failure by either party to exercise its rights under this (Contract/Agreement) shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this [Contract/Agreement] unless stated to be such in a writing signed by an authorized representative of the party and attached to the original [Contract/Agreement].

SECTION 13. PREVAILING WAGE

- 13.1. The contractor will follow all prevailing wage laws according to RCW 39.12.10
- 13.2. The contractor will submit Intent to Pay Prevailing Wage statements for the contractor and all sub-contractors prior to the first payment being made.
- 13.3. The contractor will submit Affidavits of Wages Paid statements for the contractor and all sub-contractors at the completion of the project.

SECTION 14. INDEPENDENT CONTRACTOR

The parties agree that, for the purposes of this agreement, the Contractor is an independent contractor and neither the Contractor nor any employee of the Contractor is an employee of the County. Neither the Contractor nor any employee of the Contractor is entitled to any benefits that Yakima County 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.

SECTION 15. NONDISCRIMINATION

The Contractor agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital 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 U.S.C. 12101 et seq.) or any other applicable state, federal or local law, rule or regulation.

The Contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime

contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

SECTION 16. LAWS, VENUE, JURISDICTION

This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.

SECTION 17. SEVERABILITY

If any provision of this [Contract/Agreement] or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this [Contract/Agreement], which can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this [Contract/Agreement] are declared to be severable.

SECTION 18. ATTORNEY'S FEES

In the event that either party shall be required to bring any action to enforce any of the provisions of this License Agreement, or shall be required to defend any action brought by the other party with respect to this License Agreement, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

This agreement is entered into on the _____ day of _____ 2020 and is executed with at least four original copies, of which one is to be delivered to the Contractor, one to the County, one to the Financial Services Department Room 231, of the Yakima County Courthouse and one to Facilities Services Department.

CONTRACTOR:

**BOARD OF YAKIMA COUNTY
COMMISSIONERS**

M.G. Wagner Co., Inc.

Company Name

Norm Childress, Chairman

Signature

Ron Anderson, Commissioner

Scott Wagner

Signer's name printed or typed

Vicki Baker, Commissioner

*Constituting the Board of County Commissioners for Yakima
County, Washington*

Attest:

Melissa Paul, Clerk of the Board

Approved as to form:

BOCC Agreement

121 - 2020

Yakima County, WA

Deputy Prosecuting Attorney

WSBA #35901



Facilities Services

18 East Lincoln Ave - Yakima, WA 98901

(509) 574-2416 - (509) 574-2401 - FAX (509) 574-2464

Brian Griff, Director

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (05/26/2020), the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

M.G. Wagner Co., Inc.

Bidder's Business Name


Signature of Authorized Official*

Scott Wagner

Printed Name

President

Title

5/28/2020

Date

Yakima

City

WA

State

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*