

**COMMUNITY DIVERSION PROGRAM IMPLEMENTATION SERVICES AGREEMENT
BETWEEN THE CITY OF YAKIMA
AND
PEOPLE FOR PEOPLE**

This **AGREEMENT** is made and entered into by and between the CITY OF YAKIMA, Washington, a municipal corporation, located at 129 North 2nd Street, Yakima, WA 98901 (hereinafter referred to as **CITY**), and **PEOPLE FOR PEOPLE**, a non-profit corporation, located at 304 West Lincoln Avenue, Yakima, WA 98902 (hereinafter referred to as **CONTRACTOR**).

WHEREAS, in December 2015, the Yakima City Council voted to direct staff to implement a Community Diversion Program, a Diversion Program designed to address low level crime being committed by repeat offenders that affect the quality of life in the community; and

WHEREAS, **PEOPLE FOR PEOPLE**, a Washington State non-profit corporation, experienced in performing assessments and providing work skills programming has been providing case management and support services for the Community Diversion Program; and

WHEREAS, The Yakima City Council has approved a budget that funds the Community Diversion Program through 2019 and this contract amount is consistent with the 2019 adopted budget; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed by and between the **City** and **PEOPLE FOR PEOPLE** as follows:

1. **Scope of Services.** The **CONTRACTOR** agrees to perform these services and work for the **CITY** in accordance with and as described in the following:

- A. Attached statement of work, exhibit A; and
- B. Regularly communicate with the City of Yakima Community Diversion Director to assure mutual understanding of the work to be performed and the satisfactory completion thereof.
- E. Attend each Community Diversion Session and any pre-meetings needed to prepare for the Community Diversion Session.
- G. Contractor shall ensure that all marketing materials and announcements for the project are co-branded with the City of Yakima as a partner in the project, and official logos of the City of Yakima shall be used to represent the city in said materials. These materials include, but are not limited to: program brochures, agency reports, print advertisements, posters, internet/website portals, radio and television public service announcements, shirts, hats, etc.

2. **Term of Agreement.** The term of this agreement shall be deemed to commence January 1, 2019 upon execution by both parties and shall terminate upon the completion of all services required hereunder by the **CONTRACTOR**, but no later than December 31, 2019 unless terminated earlier by either party in accordance with Section 10 of this Agreement, or in the event of outside forces (illness etc.) and accepted *force majeure* occurrences (natural disasters etc.).

3. **Consideration.** As consideration for the services performed under this Agreement, the CITY agrees to compensate the **CONTRACTOR** in accord with the following terms:

- A. In consideration of the obligation of the **CONTRACTOR** to perform in accordance with this contract the CITY **will** pay for the actual time and effort of the employee fulfilling the agreement at a rate of \$38.25 an hour, but not to exceed \$ 39,782 for the year. The City will also pay for incidental costs (Travel, communications, insurance, supplies, and facility) not to exceed \$4,037 for the year.
- B. The **CONTRACTOR** shall invoice CITY monthly in arrears for services performed under this Contract. The **CONTRACTOR** shall submit a monthly invoice no later than the 20th day of the month following the month in which the invoiced services were performed. The invoice shall state the deliverables completed during the invoiced month.
- C. Invoice shall be sent to: City of Yakima Legal Department, ATTN: Cynthia Martinez, 200 S. Third Street, Yakima, WA 98901. CITY will reimburse the **CONTRACTOR** within thirty (30) days of receipt of a valid invoice for the amount of payment due. CITY shall return any invalid or incomplete invoice to the **CONTRACTOR** within thirty (30) days after CITY receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this agreement shall be submitted by the **CONTRACTOR** no later than ninety (90) days following the termination of the agreement.

4. **Independent Contractor.**

- A. No agency, employment, joint venture or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this agreement. Inasmuch as CITY is interested in the **CONTRACTOR's** end product, CITY does not control the manner in which the **CONTRACTOR** performs this agreement. CITY is not liable for workers' compensation or unemployment compensation payments required by the State of Washington. In addition, the **CONTRACTOR** assumes responsibility for tax liabilities that result from compensation paid to the **CONTRACTOR** by CITY. CITY will report any payment made under this agreement to the Internal Revenue Service on Form 1099.
- B. No provision contained in this agreement shall be construed as entitling the **CONTRACTOR** to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of CITY.
- C. **CONTRACTOR** certifies that all approvals, licenses or other qualifications necessary to conduct business in Washington have been obtained and are operative. If at any time during the agreement period the **CONTRACTOR** becomes disqualified from conducting business in Washington, for whatever reason, the **CONTRACTOR** shall immediately notify CITY of the disqualification.
- D. **CONTRACTOR** shall neither perform work nor submit an invoice for payment for work performed under this agreement for any time period after the termination date set forth in Section 2, above.

- E. **CONTRACTOR** shall furnish its own support staff and services as necessary for the satisfactory performance of the work described in Section 1, above. Unless otherwise specified in this agreement, **CITY** will not provide any other staff, services, or material to the **CONTRACTOR** for the purpose of assisting the **CONTRACTOR** in the performance of this agreement.

5. **Hold Harmless.**

- A. **CONTRACTOR** agrees to protect, defend, indemnify, and hold harmless the **CITY**, and their elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from death, personal harm or bodily injury to any person or damage or destruction to a third party or third parties to the extent caused by any negligent act and/or omission of **CONTRACTOR**, its officers, employees, agents, volunteers and/or subcontractors, arising out of the performance of this Contract.
- B. **CITY** agrees to protect, defend, indemnify, and hold harmless the **CONTRACTOR**, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from death or bodily injury to any person or damage or destruction to a third party or third parties to the extent caused by any negligent act and/or omission of **CITY**, its officers, employees, agents, volunteers and/or subcontractors, arising out of the performance of this Contract.
- C. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

6. **Insurance.** At all times during performance of the Services, **CONTRACTOR** shall secure and maintain in effect insurance to protect the **CITY** and **CONTRACTOR** from and against 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. **CITY** reserves the right to require higher limits should it deem it necessary in the best interest of the public.

- A. **General Commercial Liability Insurance.** Before this Contract is fully executed by the parties, **CONTRACTOR** shall provide the **CITY** with a certificate of insurance as proof of liability insurance and umbrella liability insurance with a total 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. 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 policy shall name the **CITY**, its elected officials, officers, agents, employees, and volunteers as additional insureds, and shall contain a clause that the **CONTRACTOR** 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.

B. Automobile Liability Insurance.

- i. If **CONTRACTOR** owns any vehicles, 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 and umbrella liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate. The policy shall name the **CITY**, its elected officials, officers, agents, employees, and volunteers as additional insureds, and shall contain a clause that the **CONTRACTOR** will not cancel or change the insurance without first giving the **CITY** prior written notice.
- ii. If **CONTRACTOR** does not own any vehicles, only "Non-owned and Hired Automobile Liability" will be required and may added to the liability coverage at the same limits as required in that section of this Contract, which is Section 6.A entitled "General Commercial Liability Insurance".

C. **Professional Liability Coverage.** Before this Contract is fully executed by the parties, **CONTRACTOR** shall provide the **CITY** with a certificate of insurance as proof of professional liability coverage with a total 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. Said policy shall be in effect for the duration of this Contract. The policy shall contain a clause that the **CONTRACTOR** 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. If the policy is written on a claims made basis the coverage will continue in force for an additional two years after the completion of this contract.

D. Under either situation described in this Section, the required certificate of insurance 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 policy shall name the **CITY**, its elected officials, officers, agents, employees, and volunteers as additional insureds, and shall contain a clause that the **CONTRACTOR** 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.

7. Conflict of Interest and Ethics Laws.

- A. The **CONTRACTOR** hereby covenants that neither the **CONTRACTOR** nor any officer, member or employee of the **CONTRACTOR** has interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this agreement.
- B. Neither the **CONTRACTOR** nor any officer, member or employee of the **CONTRACTOR** shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his

or her functions and responsibilities with respect to the carrying out of such work.

- C. The **CONTRACTOR** shall not promise or give to any **CITY** employee anything of value that is of such character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. The **CONTRACTOR** shall not solicit a **CITY** employee to violate any **CITY** rule or policy relating to the conduct of contracting parties.
- D. **Nondiscrimination.** During the performance of the Agreement, the **CONTRACTOR** shall not discriminate in violation of any applicable federal state, and/or local law or regulation on the basis of age, sex, gender, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, and any other classification protected under federal, state, or local law. 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.
- E. **The Americans with Disabilities Act.** **CONTRACTOR** shall comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations with regard to the activities and services provided pursuant to this Agreement. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, public transportation, state and local government services and telecommunications.
- F. **Compliance with Laws.** The **CONTRACTOR** shall comply with all applicable federal, state and local laws, rules and regulations in performing this Agreement.
- G. **Debarment Certification:** **CONTRACTOR** certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency (debarred). The **CONTRACTOR** shall immediately notify the **CITY** if during the term of the agreement it becomes debarred. In the event of such debarment, the **CITY may immediately terminate this Agreement by giving written notice to CONTRACTOR.**

8. **Records, Documents, and Information.** All records, documents, writings or other information produced or used by the **CONTRACTOR** in the performance of this agreement shall be treated according to the following terms:

- A. **Public Records Act.** **CITY** is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to **CONTRACTOR'S** services must be made available to the City, and also produced to third parties, if required pursuant to the Washington Public Records Act, Chapter 42.56 RCW or by law. All determinations of records subject to release under the PRA, or otherwise required by law, shall be at the sole discretion of the **CITY**. This agreement and all public records associated with this agreement shall be available from the City for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW. To the extent that public records then in the custody of the **CONTRACTOR**

are needed for the **CITY** to respond to a request under the Public Records Act, as determined by the **CITY**, the **CONTRACTOR** agrees to make them promptly available to the **CITY**. If the **CONTRACTOR** considers any portion of any records provided to the **CITY** under this agreement whether in electronic or hard copy form, to be protected from disclosure under law, the **CONTRACTOR** shall clearly identify any specific information that it claims to be confidential or proprietary. If the **CITY** receives a request under the Public Records Act to inspect or copy the information so identified by the **CONTRACTOR** and the City determines that release of the information is required by the Public Records Act or otherwise appropriate, the **CITY'S** sole obligations shall be to notify the **CONTRACTOR** (a) of the request and (b) of the date that such information will be released to the requester unless the **CONTRACTOR** obtains a court order to enjoin that disclosure pursuant to RCW 42.56.450. If the **CONTRACTOR** fails to timely obtain a court order enjoining disclosure, the **CITY** will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of the **CONTRACTOR** to claim any exemption for disclosure under the Public Records Act. The **CITY** shall not be liable to the **CONTRACTOR** for releasing records not clearly identified by the **CONTRACTOR** as confidential or proprietary. The **CITY** shall not be liable to the **CONTRACTOR** for any records that the **CITY** releases in compliance with the Public Records Act, this section, or in compliance with an order of a court of competent jurisdiction.

- B. **CONTRACTOR** shall promptly furnish the **CITY** with such information and records which are related to the services of this agreement as may be requested by the **CITY**. Until the expiration of three (3) years after final payment of the compensation payable under this agreement, or for a longer period if required by the Washington State Local Government Common Records Retention Schedule ("CORE") of the Office of the Secretary of State, Washington State Archives, **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, papers and records which are related to the services performed by **CONTRACTOR** under this agreement.
- C. All **CITY** information which, under the laws of the State of Washington, is classified as public or private, will be treated as such by the **CONTRACTOR**. Where there is a question as to whether information is public or private, **CITY** shall make the final determination. **CONTRACTOR** shall not use any information, systems, or records made available to it for any purpose other than to fulfill the agreement duties specified herein. **CONTRACTOR** agrees to be bound by the same standards of confidentiality that apply to the employees of **CITY** and the State of Washington. The terms of this section shall be included in any subcontracts executed by the **CONTRACTOR** for work under this agreement.
- D. All proprietary information of the **CONTRACTOR**, if any, shall be held to be strictly confidential by **CITY**. Proprietary information is information which, if made public, would put the **CONTRACTOR** at a disadvantage in the market place and trade of which the **CONTRACTOR** is a part. **CONTRACTOR** is responsible for notifying **CITY** of the nature of the information prior to its release to **CITY**. **CITY** reserves the right to require reasonable evidence of the **CONTRACTOR's** assertion of the proprietary nature of any information to be provided.
- E. All records relating to costs, work performed and supporting documentation for invoices submitted to **CITY** by the **CONTRACTOR** shall be retained and made available by the

CONTRACTOR for audit by the State of Washington (including but not limited to **CITY**, the Auditor of the State of Washington, the Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this agreement. If an audit, litigation, or other action is initiated during this time period, the **CONTRACTOR** shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.

9. **Rights in Deliverables, Data and Copyrights.** The Deliverables provided by the **CONTRACTOR** under Section 1 and any item produced under this agreement, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of **CITY** which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. The **CONTRACTOR** shall not obtain copyright, patent, or other proprietary protection for the Deliverables. The **CONTRACTOR** shall not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.

10. **Suspension and Termination.**

A. **CITY** may, by giving **CONTRACTOR** thirty (30) calendar days written notice of termination, terminate this Agreement as to all or any portion of the Services not then performed, whether or not **CONTRACTOR** is in breach or default, and with or without cause. Upon receipt of any such notice of termination, the **CONTRACTOR** shall, except as otherwise directed by the **City**, immediately stop performance of the Services to the extent specified in such notice. **CONTRACTOR** shall have the same termination rights as the **City** as specified in Section 10.

B. In the event of termination pursuant to Section 10.A, the **CONTRACTOR**, shall take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this agreement, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as **CITY** may require.

In the event of suspension or termination under this Article, the **CONTRACTOR** shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by **CITY** based on the rate set forth in Section 3. **CITY** shall not be liable for any further claims, and the claims submitted by the **CONTRACTOR** shall not exceed the total amount of compensation allowed by this agreement.

C. If the **City** purports to terminate or cancel all or any part of this Agreement for **CONTRACTOR's** breach or default when the **CONTRACTOR** is not in breach or default which would permit termination or cancellation, such termination or cancellation shall be deemed to have been a termination by the **City** pursuant to paragraph 10A and the rights of the parties shall be determined accordingly.

11. **Breach or Default.**

A. Differences between the **CONTRACTOR** and the **CITY**, arising under and by virtue of

this Agreement, shall be brought to the attention of the **CITY** at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the **CONTRACTOR** shall be decided by the **CITY's** Agreement Representative or designee. All rulings, orders, instructions and decisions of the **CITY's** Agreement Representative shall be final and conclusive, subject to the **CONTRACTOR's** right to seek judicial relief pursuant to this Section.

- B. Upon breach or default by the **CONTRACTOR** of any of the provisions, obligations or duties embodied in this agreement, **CITY** may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and **CITY** retains the right to exercise all remedies hereinabove mentioned.

If **CITY** or the **CONTRACTOR** fails to perform an obligation or obligations under this agreement and thereafter such failure is waived by the other party, such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by **CITY** shall not be effective unless it is in writing and signed by the **CITY** contract manager.

- C. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in the COUNTY OF YAKIMA, Washington.

12. Amendments. This writing constitutes the entire agreement between the parties with respect to all matters herein. This agreement may be amended only by a writing signed by both parties. However, it is agreed by the parties that any amendments to laws or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendments. Any written amendments to this agreement shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the parties.

13. Assignment. The **CONTRACTOR** shall not assign any interest (including subcontracts) in this agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of **CITY**. Any such assignments or subcontracts shall be submitted for **CITY's** review ninety (90) days prior to the desired effective date. Approval by **CITY** shall not be deemed to increase in any manner the total compensation provided for in this agreement.

14. Drug Free Workplace. The **CONTRACTOR** shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. The **CONTRACTOR** shall make a good faith *effort* to ensure that all employees of the **CONTRACTOR** do not purchase, transfer, use or possess either legal or illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.

15. Construction. This agreement shall be governed, construed and enforced in accordance with the laws of the State of Washington. Should any portion of this agreement be found unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this agreement shall not be affected thereby, provided that the absence of the unenforceable provision does not render the performance of the remainder of the agreement

impossible.

16. Written Notices. All written notices required by this Agreement shall be in writing and deemed received if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage pre-paid, to the addresses set forth hereunder or to such other addresses designated in writing by any of the parties in accordance with this provision.

In case of **CITY**, to both:

City Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

And to: City Prosecutor
City of Yakima Legal Department
200 South Third Street
Yakima, WA 98901

In case of **CONTRACTOR**, to:

Madelyn Carlson, Executive Director
304 West Lincoln Avenue
Yakima, WA 98902

17. Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this agreement and shall be binding on the parties to this Agreement.

IN WITNESS WHEREOF, the parties, by signing below, indicate their agreement to the above.

CITY OF YAKIMA

By: _____
Cliff Moore, City Manager

DATE: _____

PEOPLE FOR PEOPLE

By: Madelyn Carlson
Madelyn Carlson, Executive Director

DATE: 11-13-18

ATTEST:

By: _____
City Clerk