

OPERATION AND MAINTENANCE AGREEMENT

THIS CONTRACT is made and entered into by and between the City of Yakima, a Washington municipal corporation (hereinafter the "City") and Yakima Police Activities League, a Washington non-profit corporation (hereinafter "YPAL"). In consideration of the mutual covenants contained herein, the parties agree to the terms and conditions herein.

1. Community Center Property

The City is the owner of the Washington Fruit and Produce Community Center (hereinafter "WFCC") which is located within the City of Yakima at 602 North 4th Street, Yakima, Washington, 98901, and which is located on land legally described as follows:

Lots 1 and 2, Block 64, Town of North Yakima, now Yakima, as recorded in Volume "E" of Plats, Page 1, records of Yakima County, Washington; TOGETHER WITH the vacated right-of-way for East "F" Street.

This legal description encompasses Miller Park. The WFCC is located on the Miller Park property, but does not encompass the entire property. This Lease, Site Use, and Management contract only applies to the particular buildings and accessory facilities as specifically stated herein. It does not apply to Miller Park as a whole. A map of the facility location is attached as Exhibit 1.

2. General Management and Responsibilities of YPAL

- 2.1 YPAL shall manage, operate and maintain WFCC consistent with City policies and with the general concepts of community centers in order to meet the needs of the residents, including, but not limited to, the poor and disadvantaged, particularly in the areas of health, education, employment, welfare, recreation, youth programming, and other such areas as are consistent with this Contract and the general uses of a non-profit neighborhood facility. Additionally, YPAL's Proposal, attached to the Site Use Contract dated December 3, 2013, including all of YPAL's representations, conditions and obligations submitted to the City therein, in order to obtain award of this Agreement, is incorporated herein by this reference and attached hereto as Exhibit 2.
- 2.2 At a minimum, YPAL shall keep WFCC open to serve the public between the hours of 3:00 p.m. and 7:00 p.m., Monday through Friday of each week; provided, however, that WFCC may be closed on legal holidays, due to inclement weather or other reason deemed necessary by YPAL. YPAL, at its option, may also keep WFCC open to serve the public during daytime hours and weekends.
- 2.3 The services provided for herein shall be performed by YPAL, and no person other than Board of Directors members, regular employees of YPAL, or authorized volunteers of YPAL shall be engaged in such work or services outlined herein.

- 2.4 All YPAL activities at WFCC shall be supervised by an employee of YPAL or an authorized volunteer.
- 2.5 It is contemplated by both YPAL and the City that YPAL will seek funding and donations to support its programming outside of any funding obtained from the City.
- 2.6 YPAL shall maintain WFCC as a drug free workplace, pursuant to the Drug-Free Workplace Act of 1988 and 34 CFR, Part 85, section 85.605 and 85.610. YPAL shall not permit any tenant and/or other party to possess and/or consume any illegal drugs at WFCC or within the area surrounding WFCC as described herein, during the term of this Contract.
- 2.7 YPAL shall not permit any tenant or other party to possess and/or consume any intoxicating liquor, beer and/or similar beverage/substance, or marijuana/cannabis or cannabis products at the Center and the surrounding property as legally described herein during the term of this Contract.
- 2.8 YPAL shall comply, and shall ensure that the tenants comply, with the maximum occupancy levels as set forth in the Yakima Municipal Code and by the City of Yakima Fire Marshall, in accordance with federal, state, and/or local laws and regulations.
- 2.9 YPAL shall provide the following, as may be required to perform the services provided for and described in accordance with this Contract: Board of Directors oversight, personnel, labor and supervision, technical, professional, and/or other services.

3. Term

Unless terminated in accordance with this Contract, the term of this Contract shall be for a period of five (5) years, commencing on the date both parties have signed this Contract, and terminating at midnight, December 31, 2023, provided, however, that YPAL may, at its option, extend this Contract for two additional five-year terms by giving the City written notice of its intent to extend the term no later than ninety (90) days prior to the end of the current five-year period in order to continue the term for an additional five-year period. In the event YPAL fails to exercise its option to extend this Contract for additional terms, this Contract shall automatically terminate at the end of the term. If the City determines that YPAL has not fulfilled its obligations under the Contract, it can deny the extension of this Contract.

4. Maintenance

YPAL shall keep the interior of WFCC at all times in good repair and condition as the same now is, ordinary wear and tear resulting from careful usage and damage by the elements without fault on the part of YPAL alone excepted. YPAL shall maintain and repair the doors, windows, and all interior walls and fixtures of WFCC.

The City shall provide janitorial services a minimum of two times per week. The City shall also conduct routine maintenance. Damage caused by YPAL and/or its clients, agents, volunteers,

or employees, will be the responsibility of YPAL. YPAL shall remove sidewalk snow and ice on walkways leading to and from WFCC, as well as adjacent sidewalks, and keep the sidewalks clear of obstructions.

YPAL and the City will continue to work together to ensure that the community center and adjacent park are maintained for residents' use and enjoyment.

5. Program Services

YPAL Services will, in general, focus on health and wellness issues of low income and disadvantaged persons in the northeast area of Yakima, and will focus on services for youth. Examples of programs include mentoring programs for middle school use, literacy, sports and recreation, job training, tutoring and educational programming (such as STEM focused programming).

The City shall not be responsible for providing any equipment or supplies which are necessary for programs or services offered by YPAL, unless otherwise reimbursable under this Contract.

For the year 2019, the City Council has budgeted up to \$30,000.00 for program services. The City makes no representation or promise of future funding for program services. Disbursements for program services shall be in accordance with Section 9 of this Contract, below.

6. City Funding

The City shall not be required to reimburse YPAL for any of the costs of operation, maintenance or capital improvements, except as otherwise provided in this Contract and to the extent that funds are appropriated by the City Council and specifically approved for disbursement by the Public Works Department. Such appropriations involve the legislative prerogative of the City Council, and no assurances are given that appropriated funds are available in any particular year. Except as otherwise provided for in this Contract, YPAL agrees to perform the services specified in this Contract in consideration of the community action benefits derived herein, and the use of WFCC. The City shall have no obligation to pay YPAL for said services.

Funding may be allocated on a year-by-year basis during the regular budget process. Funding amounts allocated in 2019 do not carry over to 2020. The City makes no representation or promise of future funding.

7. Maintenance Costs Associated with WFCC.

The City is responsible for the general maintenance of WFCC as outlined herein. The City will conduct the following maintenance at the WFCC, as long as the maintenance needs are not due to the intentional or negligent acts of YPAL and/or its clients:

- HVAC checks and maintenance
- Maintenance and replacement of exterior locks
- Plumbing, mechanical and electrical systems
- Interior floors, walls and structural matters
- Exterior structure and roof
- Janitorial services twice per week (including supplies)

YPAL and the City will work together to ensure the building is properly maintained. Any damage caused by YPAL or its clients, or due to the intentional or negligent actions of YPAL, its officers, directors, agents, employees, volunteers or clients is the sole responsibility of YPAL.

Maintenance costs will also include the janitorial supplies deemed necessary by the City for its janitorial work. Maintenance costs do not include items such as paper towels, napkins, toilet paper, hand soap, or other items generally not used for the cleaning of the WFCC.

8. Capital Facilities Expenditures

The City and YPAL will work together to formulate a prioritized list of capital facility projects recommended for completion. Examples of capital projects include, but are not limited to:

- Improvement to the exterior structure of WFCC
- Replacement or improvements to the locking systems.
- HVAC system replacement
- Mechanical system replacements
- Roof repairs and/or replacement
- Replacement of kitchen and/or bathroom appliances and/or fixtures
- Major renovations to WFCC
- ADA compliance measures
- Environmental safety compliance

All capital facilities improvements will be determined by the City and spending will be administered by the City of Yakima as funds are made available. The City makes no representation or promise of future funding or that any or all capital projects will be completed during the term of this Contract. Further, capital improvement decisions may also be subject to the facility improvement agreement entered into with Washington Fruit and Produce Company under Resolution 2015-018.

9. Payments and Disbursements

Disbursements by the City from this Contract shall be on a reimbursement basis covering actual expenditure by YPAL or obligations of YPAL currently due and owing, but not paid. YPAL will provide monthly, but not less than quarterly, reimbursement requests and invoices to the City and specify on such requests the activities performed.

10. Alterations, Modifications and Capital Improvements

YPAL shall make no alteration, modification, and/or capital improvement to WFCC, or surrounding property, without the prior written consent of the City. Capital improvement projects must be agreed to by the City and the City and YPAL will work together to address capital improvements to WFCC. Any alterations, modifications, and/or capital improvements not funded by the City shall be at the sole expense and cost of YPAL.

11. Personal Property

YPAL shall be responsible for the possession, use, and maintenance of all personal property (including personal property of the City) located at WFCC and shall take all reasonable steps to ensure that such personal property is not removed from WFCC. An inventory of the City's personal property is attached hereto as Exhibit 3 and fully incorporated herein.

12. Recruitment of Tenants/Licensees, Lease/License Agreements, and Revenue

- 12.1 YPAL is responsible for the recruitment of WFCC tenants, licensees, service providers and partners.
- 12.2 All leases with tenants for a term of six (6) months or more in duration for space at WFCC must be in writing and approved by the City Manager or his/her authorized designee. Short term license agreements and leases having a duration of less than six (6) months will not require approval by the City Manager. All leases and license agreements shall be executed and performed in compliance with all applicable federal, state, and local laws and ordinances. Within thirty (30) days after the execution thereof, YPAL shall provide the City with written copies of all lease and license agreements for space at WFCC.
- 12.3 Every lease or license agreement shall contain a provision requiring tenant or licensee to pay the full amount of leasehold excise tax, if applicable, in accordance with the requirements of RCW 82.29A, as now or hereafter amended. It shall be the affirmative responsibility of YPAL to collect the leasehold excise tax, if applicable, from all tenants, and to remit said taxes to the City Department of Finance on a monthly basis.
- 12.4 All payments and revenue received from WFCC leases and license agreements shall be handled and controlled by YPAL for operational expenses and management of WFCC. YPAL shall provide the City with a written financial report, on at least an annual basis, showing the amount of lease and license revenue received from all sources. All of YPAL's lease and license revenue information shall be compiled and maintained in accordance with generally accepted accounting principles.
- 12.5 Unless otherwise authorized by the City Manager, YPAL shall require that all tenants of WFCC maintain and provide proof of liability insurance coverage in accordance with Section 20 of this Contract, including, but not limited to the same level of coverage. The policy shall name the City, its elected and appointed officials, officers, agents, employees and volunteers as additional insureds.

13. Utilities

The City will continue to pay reasonable utilities fees associated with the WFCC. YPAL is encouraged to engage in conservation measures, which include, but are not limited to, turning down the heat or air when leaving the building for the evening, and other cost-saving measures that are requested by the City.

14. Taxes and Assessments

YPAL shall be solely responsible for compensating its employees and for paying all related taxes, deductions and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, 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, YPAL shall pay the same before it becomes due.

15. Independent Contractor Status of YPAL

YPAL and the City understand and expressly agree that YPAL is an independent contractor in the performance of each and every part of this Contract. YPAL expressly represents, warrants and agrees that its status as an independent contractor in the performance of the work and services required under this Contract is consistent with and meets the six part independent contractor test set forth in RCW 51.08.195. YPAL, as an independent contractor, assumes the entire responsibility for carrying out and completing the work and/or services required under this Contract. YPAL shall be responsible for ensuring that all employees, agents and subcontractors are licensed and authorized to operate the equipment necessary to perform this Contract, with all required fees and permits paid and in good standing, in accordance with law. YPAL and its employees shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between YPAL or any YPAL officer, employee or agent, and the City.

16. Maintenance and Retention of Records

- 16.1 YPAL shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the costs, expenses and revenues of the management, operation and maintenance of WFCC under this Contract. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the City. YPAL shall make such books, accounts, records, documents and other materials available and afford the proper facilities for such inspection and/or audit within forty-eight (48) hours of inspection/audit notification from the City. Such books, accounts, records, documents and other materials may be copied by representatives of the City as part of such inspection/audit. However, the making of (or failure or delay in making) such inspection or approval shall not relieve YPAL of responsibility for performance of this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. YPAL shall preserve and make available all such books, accounts, records, documents and other materials for a period of at least six (6) years after termination of this Contract.
- 16.2 YPAL shall promptly furnish the City with such information related to services and/or work performed pursuant to this Contract as may be requested. Until the expiration of six (6) years after termination of this Contract, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, YPAL shall provide the City access to (and the City shall have the right to examine, audit and copy) all of YPAL's books, documents, papers and records which are related to the services and work performed under this Contract.
- 16.3 The City is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to YPAL's services under this

Contract must be made available to the City, and also produced to third parties, if required, pursuant to the PRA 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 Contract and all public documents associated with this Contract shall be available to the City for inspection and copying by the public where required by the PRA or other law, to the extent that public records in the custody of YPAL are needed for the City to respond to a request under the PRA, as determined by the City. If YPAL considers any portion of any records provided to the City under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, YPAL shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the PRA to inspect or copy the information so identified, and determines that the release of the information is required or otherwise appropriate, the City's sole obligation shall be to notify YPAL of the request and the date such information will be released to the requestor unless YPAL obtains a court order to enjoin the release, pursuant to RCW 42.56.450. If YPAL 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 YPAL to claim any exemption for disclosure under the PRA. The City shall not be liable to YPAL for releasing records not clearly identified by YPAL as confidential or proprietary. The City shall not be liable to YPAL for any records that the City releases in compliance with the PRA, this section, or in compliance with an order of a court of competent jurisdiction.

17. Access and Inspection of WFCC

The City and its agents or designees shall have the right to enter and inspect the WFCC property at all reasonable times. City employees who may exercise such inspection rights include, but are not limited to, police officers, fire inspection personnel, and code enforcement personnel. If any inspection demonstrates, in the opinion of the inspector, clear and present danger to the public, WFCC, or those in attendance at WFCC, the inspector, the Fire Chief or the Police Chief or other appropriate City official/officer may order the event or activity concluded and WFCC vacated, at no risk or liability to the City, its public officers, officials, employees, agents and/or volunteers. YPAL shall not enter into any lease or license agreement respecting space in WFCC without incorporating into such lease or license agreement a provision that contains the language of this provision regarding the City's right of inspection and authority to order an event or activity concluded and to vacate WFCC.

18. Non-Profit Board

The Board of Directors for YPAL shall continue throughout the term(s) of this Contract. One member of the City Council, chosen by the City Council, shall serve as an ex officio Board member, be invited to all Board meetings and functions, and be provided all Board documents that are not deemed confidential. The City Council should be periodically updated by a representative from YPAL at a City Council general business meeting.

19. Security

- 19.1 The City will provide and maintain a security system for WFCC and the surrounding property.
- 19.2 YPAL shall provide or by written agreement require subtenants to provide adequate security at all events held at WFCC. Such security shall include a minimum of one (1) uniformed security guard, licensed in accordance with RCW 18.170, as now or hereafter amended, for each fifty (50) persons in attendance. Security measures shall include monitoring of WFCC entrances, premises and parking lots to prevent criminal activity and to ensure that persons who possess dangerous items, who display disruptive behavior and/or who are obviously under the influence of drugs or alcohol, do not enter or remain at WFCC or its surrounding property as legally described herein.
- 19.3 For all special events with an anticipated attendance of one hundred (100) or more persons, YPAL shall provide the City Police Chief with notice of the event, and if the event is being held by a subtenant, a copy of the applicable lease or license agreement no later than fifteen (15) days before the event.

20. Nondiscrimination Provision

- 20.1 During the performance of this Contract, YPAL shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. 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 the services contemplated under this Contract. This non-discrimination provision shall include but not be limited to the following:
 - 20.1.1 The benefits or services provided by YPAL at WFCC;
 - 20.1.2 The rules, regulations, and/or practices established by YPAL for use of WFCC;
 - 20.1.3 All lease and license agreements entered into by YPAL with respect to space at WFCC; and
 - 20.1.4 The employment practices of YPAL at WFCC
- 20.2 YPAL shall not enter into any lease or license agreement respecting space in WFCC without incorporated in such lease or license agreement provisions which will ensure that the use or occupancy of WFCC, in the provision of neighborhood services and other benefits, will be available without regard to race, age, creed, color, national origin, religion, sex, marital status, or the presence of any sensory, mental, or physical disability. YPAL shall also furnish all information, evidence, documents and reports required by the City to substantiate compliance with this non-discrimination clause, upon request.

21. Indemnification and Hold Harmless

- 21.1 YPAL agrees to protect, defend, indemnify, and hold harmless, the City, its elected and appointed officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits,

administrative and other proceedings and all judgments, awards, losses, liabilities, damages (including punitive or exemplary damages), penalties, fines, costs and expenses (including attorneys' fees and disbursements) for, arising out of, or related to any actual or alleged death, injury, damage or destruction to any person or any property (including but not limited to any actual or alleged violations of civil rights) to the extent caused by, arising out of, or relating to any act and/or omission (whether intentional, willful, reckless, negligent, inadvertent or otherwise) resulting from, arising out of, or related to YPAL's, its officers, employees, agents, volunteers and/or subcontractors, actions, services, work or materials pursuant to this Contract.

- 21.2 YPAL specifically and expressly waives its immunity under industrial insurance, Title 51 RCW, or immunity under any other provision of law to the extent of the obligations assumed by the parties protected hereunder. YPAL and the City acknowledge and agree that this waiver was mutually negotiated.
- 21.3 All services rendered or performed under this Contract will be performed or rendered entirely at YPAL's own risk and YPAL expressly agrees to defend, indemnify and hold harmless the City and all of its officers, agents, employees and elected officials from any and all liability, loss, fines, penalties or damages, including reasonable cost of defense, they may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the City which result from, arise out of, or are in any way connected with the services to be performed by YPAL under this Contract.
- 21.4 Nothing contained in this section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

22. Insurance

- 22.1 At all times during performance of the services in this Contract, YPAL shall secure and maintain in effect insurance to protect the City and YPAL from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Contract. YPAL 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 City or the public.
- 22.2 Commercial Liability Insurance. Before this Contract is fully executed by the parties, YPAL shall provide the City with a certificate of insurance as proof of commercial liability insurance and commercial 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 during the duration of this Contract. The policy shall name the City, its elected and appointed officials, officers, agents, employees, 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 thirty (30) calendar days prior written notice (any

language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). 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.

- 22.3 Commercial Automobile Liability Insurance. Before this Contract is fully executed by the parties, YPAL shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total a minimum liability limit of Four Million Dollars (\$4,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and include, but not be limited to, owned, non-owned and hired vehicles, and be shown on the certificate. 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 and appointed officials, officers, agents, employees, 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 thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). 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.
- 22.4 Directors and Officers Liability Insurance. Before this Contract is fully executed by the parties, YPAL shall provide the City with a certificate of insurance as evidence of Directors and Officers Liability Insurance with coverage of at least One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate limit of at least One Million Dollars (\$1,000,000.00). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company rated A-VII or higher in Best's Guide. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of this Contract, or shall provide full prior acts. The insurance coverage shall remain in effect during the term of this Contract and for a minimum of three (3) years following the termination of this Contract.
- 22.5 Property Insurance. The City shall maintain "special form" perils property insurance coverage on WFCC located at 602 North 4th Street, Yakima, Washington, and its contents in such amount as the City deems appropriate. YPAL shall have the responsibility of procuring "special form" perils property insurance on personal property and tenants' improvements and betterments owned by, or in the care, custody or control of YPAL. YPAL and the City hereby release and discharge each other from and against all liability arising either from fire loss or damage caused by any of the "special form" perils covered by insurance policies which are in force and effect at the time of such loss or damage, even though such loss or damage may be due to negligence, act or neglect of either YPAL or the City or agents or employees of either party. It is expressly understood and agreed that it is the intention of the parties that this

provision constitutes a waiver and release of any and all subrogation rights which the insurance companies might have under such insurance policies.

- 22.6 Tenants Must Carry Liability Insurance. YPAL shall require that all tenants of WFCC carry liability insurance in accordance with this section, as discussed in Section 10.5 of this Contract.
- 22.7 Workers' Compensation. YPAL agrees to pay all premiums provided for by the Workman's Compensation Act of the State of Washington. Evidence of YPAL's workers' compensation coverage will be furnished to the City. YPAL holds the City harmless for any injury or death to YPAL's employees while performing this Contract.
- 22.8 Insurance Provided by Subcontractors. YPAL shall ensure that all subcontractors it utilizes for work and/or services rendered under this Contract shall comply with all of the above insurance requirements.
- 22.9 City Does Not Provide Insurance for YPAL. It is understood that the City does not maintain any form of insurance for YPAL, its officers, employees, agents, instructors, volunteers, agents, and/or subcontractors.

23. Termination.

- 23.1 The City may, by giving YPAL sixty (60) calendar days written notice of termination, terminate this Contract as to all or any portion of the services or work not then performed, whether or not YPAL is in breach or default, and with or without cause. Upon receipt of any such notice of termination, YPAL shall, except as otherwise directed by the City, immediately stop performance of the services to the extent specified in the notice. YPAL shall have the same termination rights as the City as specified in this section.
- 23.2 In the event of termination pursuant to paragraph 21.1, an equitable adjustment shall be made in the compensation payable to YPAL under this Contract, provided that such compensation as so adjusted shall in no event exceed a percentage of the services satisfactorily completed at the time of termination. Further, YPAL shall not be entitled to any reallocation of cost, profit or overhead. YPAL shall not in any event be entitled to anticipated profit on services or work not performed on account of such termination. YPAL shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination.
- 23.3 If the City purports to terminate or cancel all or any part of this Contract for YPAL's breach or default when YPAL is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed to have been a termination by the City pursuant to paragraph 21.1 and the rights of the parties shall be determined accordingly.
- 23.4 This Contract may also be terminated in whole or in part by mutual agreement of the parties.

24. Conflict of Interest

YPAL covenants that neither it, nor its officers, 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. YPAL further covenants that it will not recruit anyone or any entity having such a conflict of interest during the performance of this Contract.

25. Miscellaneous Provisions

- 25.1 Compliance with Applicable Laws. YPAL shall operate, maintain and manage WFCC in accordance with all applicable statutes, laws, regulations and ordinances. YPAL shall obtain all necessary permits required by law. YPAL shall not allow the use of WFCC for any unlawful purposes, nor shall it commit any waste on WFCC property or damage the same, nor permit waste or damage by others.
- 25.2 Assignment. This Contract, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by YPAL 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 YPAL stated herein.
- 25.3 Modification. Either party may request changes in this Contract, however, no change, modification, or alteration to this Contract shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.
- 25.4 Integration. This written document constitutes the entire agreement between the City and YPAL. There are no other oral or written Contracts between the parties as to the subjects covered herein.
- 25.5 Severability.
 - 25.5.1 If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
 - 25.5.2 If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and the Contract shall be deemed modified to conform to such statutory provision.
 - 25.5.3 Should the City determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the City may, in its sole discretion, terminate this Contract, effective immediately upon notice of termination.

- 25.6 Non-Waiver of Breach. A waiver by either party hereto of a breach by 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.
- 25.7 Survival. Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.
- 25.8 Governing Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington in Yakima County.
- 25.9 Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent to the parties at their addresses as follows:

TO THE CITY: Cliff Moore, City Manager
 City of Yakima
 Yakima City Hall
 129 North Second Street
 Yakima, WA 98901

TO OIC: Joe Willis, Executive Director
 Yakima Police Athletic League
 602 North 4th Street
 Yakima, WA 98901

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when hand-delivered at the addresses specified above, or three (3) days after the date of mailing to the addresses specified above.

CITY OF YAKIMA

YAKIMA POLICE ACTIVITIES LEAGUE

Cliff Moore, City Manager

Date: _____

By:
Its:
Date: _____

ATTEST:

Resolution No.: _____

On this _____ day of _____, 2019, I certify that I know or have satisfactory evidence that _____, is the _____ (title of person) of Yakima Police Activities League ("YPAL") and acknowledged that they are authorized to execute the foregoing instrument for and on behalf of YPAL and said person acknowledged that they signed this instrument and acknowledged it on behalf of YPAL for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____