

**YAKIMA COUNTY
and
CITY OF YAKIMA
(Aquatics Center Infrastructure)**

1. PARTIES

This Supporting Investments in Economic Diversification (hereinafter referred to as SIED) Contract is made by and between Yakima County (hereinafter referred to as **the County**) whose address is 128 North Second Street, County Courthouse, Room 232, Yakima, Washington 98901, and **the City of Yakima** (hereinafter referred to as **the City**) whose address is 129 N 2nd Street, Yakima, WA 98901. Notices between the parties shall be made where and as provided for on Page 7, Section 22, NOTICES.

2. TERM

This Contract takes effect upon execution hereof by the authorized representatives of both parties and continues in effect as required under Section 5, MUTUAL CONSIDERATION, or until terminated as provided for in Section 8, SUSPENSION, TERMINATION, AND CLOSEOUT.

3. PURPOSE

The purpose of this Contract is to provide funds to pay for the previous construction of certain infrastructure improvements (hereinafter referred to as **the Project, See Appendix A**) using certain County funds specifically designated for such infrastructure. The **Project** funds identified in this Contract will compensate the costs of certain completed infrastructure improvements described in **Appendix A** that were necessary for the YMCA/Aquatics Center Complex located at the City of Yakima owned park.

4. RECITALS

- A. The Parties make this Contract based on and in recognition of certain relevant facts and circumstances including:
- B. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Yakima County Code 3.10.010 for the purpose of financing public facilities in the County, and the proceeds are deposited in the Yakima County Infrastructure Fund (also referred to as SIED Fund), according to YCC 3.10.040. The County has determined that the YMCA/Aquatics Center Complex is a public facility for purposes of RCW 82.14.370.
- C. The City previously has applied for and received SIED funds for the purpose of improving River Road, which serves as the primary means of access to the **Project**. The River Road improvements have been completed but the parties recognize that there is a need for additional funding to compensate the cost of additional now completed infrastructure improvements (the Project) to the YMCA/Aquatic Center Complex, separate from the River Road infrastructure improvements.

- D. Given that the **Project** is one of regional significance that will substantially improve the quality of life for the citizens of the City of Yakima and Yakima County, Yakima County, with support from the SIED Board, has determined that it is appropriate, and in compliance with RCW 82.14.370, to make an additional investment in the **Project** in the form of additional grant funding that it wishes to pass through the City of Yakima to the **Project**. This grant is intended to compensate the YMCA for the costs of the now completed infrastructure improvements of the **Project**, exclusive of the upgrades to River Road. These improvements include, but are not limited to, necessary site work, utilities, parking surface materials, parking lot lights, sidewalks and other infrastructural improvements. A complete list of the eligible infrastructure **Project** costs is included in Appendix A.
- E. The **Project** has been paid for through a combination of City, private, and County funds, including this **\$1,000,000.00 from the SIED Fund to be in the form of a grant**.
- F. Yakima County will provide the additional SIED funding to the YMCA, through the City of Yakima, who will act as a pass through only, with the clear understanding that these funds can be expended for no purpose other than paying for infrastructure costs related to the **Project** and specified in Appendix A.
- G. RCW 82.14.370 was adopted to serve the goals of promoting business in rural distressed areas, providing family wage jobs and the development of communities of excellence in such areas, and the parties expect the **Project** to further these goals.
- H. RCW 43.160 and 43.160.020 adopted and amended for related purposes with those of RCW 82.14.370, define public facilities to mean a project of a local government, to include various infrastructure, buildings, and works. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county (RCW 82.14.370(3)(a)). The County and the SIED Board have determined that the **Project** complies with said statutes. The YMCA facility is not specifically listed in the City of Yakima Comprehensive Plan. The City, as the pass through agent, is not required to independently verify whether the proposed use and Project complies with the statutes referenced herein, and the County and SIED board will hold the City harmless and indemnify it from any claims that the use of the money by the YMCA violates the law.
- I. The County, under authority of RCW 36.01.085, and by agreement of February 19, 1999, has engaged the Yakima County Development Association, hereinafter "YCDA", also known as Choose Yakima, to provide administrative and technical assistance in furtherance of the County's economic development.
- J. The County created the SIED Board to review applications for grants from the SIED Fund and make recommendations for SIED Fund investments based on commitment of other funds, potential for resulting job creation, quality of life, and other factors.
- K. The County submits that YDCA has investigated the **Project** and specifically the completed elements identified in Appendix A and has assisted in preparing the application for SIED funds, and the SIED Board has reviewed the application for SIED funds and has recommended approval.

- L. The SIED Fund balance is sufficient to make the requested contribution to the **Project**.
- M. RCW 39.34 authorizes interlocal agreements whereby municipal governments may jointly exercise the powers granted to each.

5. MUTUAL CONSIDERATION

- A. **COUNTY GRANT**—The County shall *grant One Million Dollars and Zero Cents (\$1,000,000.00)* to the City for the sole purpose of passing the funds on to the YMCA for the payment of the costs of the completed work identified in Appendix A hereto, for the benefit of the **Project** described herein. The City must not use these grant funds to reduce their contributions to the project it has already contractually committed. In the event the City breaches its obligation to pass the funds provided herein on to the YMCA for payment of costs associated with the completed work described in Appendix A, the City will be expected to immediately repay the grant to the County.

This grant shall be by County warrant drawn on the SIED Fund and payable to the City within 30 days of the County’s receipt of 1) a signed copy of the YMCA Project engineer’s certificate that 100 percent of the work on the Project has been completed and 2) the YMCA’s invoice for said grant.

The above contract provision is specifically bargained for by the County and the City agrees to it. The parties agree that in the event that this contract term is invoked by the County that it will hold the County harmless and release the County from any and all claimed actual and/or consequential damages that may result from the County’s decision to withhold the Grant funds if the YMCA does not meet the 100 percent completion requirement.

In the event the City breaches the intent of this agreement, the City shall *repay* the County’s Grant of any unused portion of the Grant funding from Yakima County not spent on eligible costs for the **Project** as identified in Appendix A.

- B. **OWNERSHIP AND USE**—The YMCA shall construct, own, maintain, and operate the Project as a part of its private infrastructure for economic development, available for use by the patrons visiting the YMCA and Aquatic Center facilities. The YMCA may also permit the use of the **Project** by the County and its departments on like terms with other users, at such time as the Board of Yakima County Commissioners may deem expedient. For purposes of this paragraph, ownership, maintenance, and operation of the **Project** or any portion thereof by another municipality, under any conveyance or dedication, which is subject to and preserves the County’s right of use, shall be deemed ownership, maintenance, and operation by the City.

6. RECORDS, REPORTS AND AUDITS

The City agrees to maintain such records, make such reports, and follow such procedures as may be required by the County, pertaining to this Contract. All records pertaining to this Contract and work undertaken hereunder by the City shall be retained by the City for a period of seven years after final audit unless a longer period is required to resolve audit findings or litigation. The

County and other authorized representatives of the State and Federal government shall have access to any books, documents, papers, and records of the City, which pertain to this Contract or work undertaken hereunder in possession of the City for the purpose of making audit, examination, excerpts, and transcriptions.

7. RELATIONSHIP OF PARTIES AND AGENTS

- A. The relationship of the City to the County shall be that of an independent contractor rendering professional services. The City shall have no authority to execute contracts or to make commitments on behalf of the County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the City. The City's sole requirement and responsibility in this Contract is to pass through SIED funds to the YMCA.
- B. All services required hereunder to complete the **Project** have been performed by the YMCA, or under its supervision, Presumably all personnel engaged in the work were fully qualified and authorized or permitted under State or local law to perform such services.

8. SUSPENSION, TERMINATION, AND CLOSEOUT

- A. If the City fails to comply with the terms and conditions of this Contract, the County may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this Contract in the manner specified herein:
- B. **SUSPENSION**—If the City fails to comply with terms and conditions of this Contract, or whenever the City is unable to substantiate full compliance with provisions of this Contract, the County may suspend this Contract pending corrective action or investigation, effective not less than seven days following written notification to the City or its authorized representative. The suspension will remain in full force and effect until the City has taken corrective action to the satisfaction of the County and is able to substantiate its full compliance with the terms and conditions of this Contract. No obligations incurred by the City or its authorized representative during the period of suspension will be allowable under this Contract, except:
 - I. Reasonable, proper, and otherwise allowable costs which the City could not avoid during the period of suspension;
 - II. Otherwise, allowable costs incurred during the period of suspension, if upon investigation, the County is satisfied of the City's compliance with the terms and conditions of this Contract to the extent of the compensation claimed by the City.
- C. **TERMINATION FOR CAUSE**—If the City fails to comply with the terms and conditions of this Contract and any of the following conditions exist:
 - I. The lack of compliance with the provisions of this Contract were of such scope and nature that the County deems continuation of this Contract to be substantially detrimental to the interests of the County;

- II. The City has failed to take satisfactory action as directed by the County or its authorized representative within the time period specified by same;
 - III. The City has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Contract; then,
 - IV. The County may terminate this Contract in whole or in part, and thereupon shall notify the City of termination, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the City. After this effective date, no charges incurred under any terminated portions outlined in the application for funding are allowable.
 - V. The County may terminate the Contract if the City does not use the Grant funding for the express purpose of providing the grant funds as a pass-through to the YMCA to cover the costs of the now completed work identified in Appendix A of this Contract for the **Project**.
- D. **TERMINATION FOR OTHER GROUNDS**—This Contract may also be terminated in whole or in part by mutual consent and written agreement setting forth the conditions of termination, including effective date and, in case of termination in part, that portion to be terminated.

9. **COPYRIGHT RESTRICTION**

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the City.

10. **COMPLIANCE WITH LAWS**

The County and the City shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments with regard to the performance of this Contract. The County and the SIED Board have determined to grant the SIED funds that are the subject of this Contract to the purposes of the YMCA **Project** and have identified the City as the recipient of the SIED funds; through this Contract the County and the SIED Board have directed that the subject grant funds shall be passed through to the YMCA as specified in this Contract. The County accepts sole and complete responsibility for the application of the SIED funds to the purposes of this Contract so long as the City provides the funds to the YMCA as set forth in this Contract. The County shall hold the City harmless from any claims that the SIED funds were improperly used, or any violation of RCW 83.14.270.

11. **NONDISCRIMINATION & TITLE VI OF THE CIVIL RIGHT ACT OF 1964**

The City agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, veteran status, pregnancy, 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 YMCA shall ensure that its contractors and subcontractors abided 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. The City is under no obligation to independently verify compliance.

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. SECTION 109—HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall on the grounds of race, color, creed, religion, sex, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. AGE DISCRIMINATION ACT OF 1975 (As Amended)

No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal funding assistance (42 U.S.C. 610 et. seq.)

14. SECTION 504 OF THE REHABILITATION ACT OF 1973 (As Amended)

No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds (29 U.S.C. 794).

15. INTEREST OF AGENTS AND OFFICERS OF THE COUNTY AND THE CITY

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Contract.

16. PUBLIC LIABILITY

The City shall maintain for the duration of work under this Contract, issued on an occurrence basis, comprehensive liability insurance with a combined single limit of not less than five million dollars (\$5,000,000.00) from a company authorized to provide insurance in the State of Washington. Said policies shall provide that the policy shall not be canceled or altered by any party without written notice to Yakima County, delivered not less than 30 days prior to such

cancellation or alteration. Applicant certifies that comprehensive liability insurance with a combined single limit of not less than \$5,000,000.00 is in effect.

17. ASSIGNABILITY

The City shall not assign any interest in this Contract and shall not transfer any interest in this Contract (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the City from the County under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the City.

18. NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Contract or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Contract.

19. CONTRACT MODIFICATIONS

It is mutually agreed and understood that no modification or waiver of any clause or condition of this Contract is binding upon either party unless such modification or waiver is in writing and executed by the County and the City.

20. SEVERABILITY

If any portion of this Contract is changed per mutual contract or any portion is held invalid, the remainder of this Contract shall remain in full force and effect.

21. NOTICES

A. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO CITY: Alex Meyerhoff
Interim City Manager
129 North Second Street
Yakima, WA 98901

TO COUNTY: Craig Warner
Financial Services Director
128 North Second Street, Room 232
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 mailed or hand-delivered at the addresses specified above.

22. INTEGRATION

This Contract contains all terms and conditions agreed to by the County and the City. There are no other oral or written agreements between the City and County as to the subjects contained herein. No changes or additions to this Contract shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

23. GOVERNING LAW AND VENUE

All questions of the validity, construction, and application of this Contract shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Contract shall be the Superior Court of Yakima County, Washington.

24. FILING

Upon execution by the authorized representatives of the parties, a copy of this Contract shall be promptly filed with the Yakima County Auditor pursuant to RCW 39.34.040.

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IN WITNESS WHEREOF, the County and the City have executed this Contract as of the date and year last written below.

CITY OF YAKIMA

BOARD OF COUNTY COMMISSIONERS

Alex Meyerhoff, Interim City Manager

Michael D. Leita, Chairman

Attest:

Norm Childress, Commissioner

Sonya Claar Tee, City Clerk

Ron Anderson, Commissioner

Date

Approved as to Form:

Dan Clark, Deputy Prosecuting Attorney

CONTRACT AUTHORIZATION

Attest:

Melissa Paul, Clerk of the Board

Date

APPENDIX A:

The parties hereby agree that any of the below identified **Project** costs shall be eligible for payment of Grant funding up to and not to exceed one million dollars on the following eligible costs which are listed below:

SCOPE	COST	DETAILS
Sitework	\$157,141	Silt Fence & construction entrance, remove vegetation, cuts & fills, gravel for sidewalks, electrical trenching for parking lot lights
Utilities	\$252,735	Sewer, storm, fire water, domestic water, dry utilities, demo
Site Concrete	\$239,246	Curbs, sidewalks, concrete vehicle paving, detectable warning pavers
Asphalt	\$245,016	Prep, grade and pavement at new parking lots and change order for West parking lot
Asphalt Striping/Misc	\$7,400	Striping, wheel stops,
Fencing	\$16,740	Exterior site fencing
Parking Lot Lights	\$85,050	