

AGREEMENT
BETWEEN
THE CITY OF YAKIMA
AND
YAKIMA COUNTY DEVELOPMENT ASSOCIATION

THIS AGREEMENT is entered into this ____ day of _____, 2020, by and between the City of Yakima (hereinafter referred to as the “Grantee”) and the Yakima County Development Association (hereinafter referred to as the “Recipient”).

WHEREAS, the Grantee has received CARES ACT (CARES) funds to be used for COVID-19 to address effects arising from the pandemic (hereinafter sometimes referred to as “CARES”); and

WHEREAS, the Grantee wishes to use those funds to provide economic assistance grants to small businesses as defined in this Agreement; and

WHEREAS, the Recipient has agreed to administer the small business assistance grant program; and

WHEREAS, the Grantee wishes to engage the Recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. SCOPE OF SERVICE

A. Activities

The Recipient will be responsible for administering CARES funding granted to the Grantee to address effects arising from the COVID-19 pandemic in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CARES program:

Program Delivery

Activity: Recipient will use CARES funding to provide grants to small businesses to provide short-term assistance, enable retention of jobs, and stabilize small businesses affected by the COVID-19 pandemic.

General Administration

The Recipient will maintain program and financial records documenting eligibility, provisions of services, grants allocated, small business information, advertising and marketing, application review, and decision-making.

B. CARES Act Objectives

All activities funded with these CARES funds must be for the costs of business interruption caused by required closures. The funds must be specifically for COVID related impacts and needed to prevent significant damage to the local economy.

The Recipient will provide all documented data collected to Grantee through monthly reports and a final report which will provide all data requested in this Agreement. Additional information may be requested by Grantee and any such information shall be provided by Recipient.

C. Levels of Accomplishment—Goals and Performance Measures

- i. Recipient shall administer the grant program for small businesses in the City of Yakima with the goal of providing grant funds to small businesses to keep those businesses viable during the COVID-19 pandemic and beyond.
- ii. Recipient shall document grant reimbursements, employee numbers, and success or failure of the business on or before December 31, 2020, after the grant funds have been provided.
- iii. Recipient shall follow up with successful applicants on or before June 30, 2021, after grant funds have been provided to collect data on the business.

D. Staffing

Recipient shall provide adequate staffing to administer the grant program. Grantee will provide technical assistance when requested. Jonathan Smith of YCDA shall be the primary staff person and key personnel for purposes of this Agreement. Any changes in key personnel assigned or their general responsibilities under this Agreement are subject to the prior approval of the Grantee.

E. Performance Monitoring

The Grantee will monitor the performance of the Recipient against goals and performance standards required herein. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

2. TIME OF PERFORMANCE

Services of the Recipient shall start on the effective date of this Agreement and end on the 31st day of October, 2020. Funds will not be available to the Recipient from the CARES program after the completion date, unless otherwise approved by Grantee.

3. BUDGET

Funding of One Million Dollars (\$1,000,000.00) will be granted to small businesses for items related to the Scope of Service.

All funds shall be disbursed as part of the program. Recipient shall be allowed to retain a maximum of Five Thousand Dollars (\$5,000.00) of the funding for administrative costs and

expenses. Any amendments to the budget must be approved in writing by both the Grantee and the Recipient.

4. PAYMENT

- A. It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed One Million Dollars (\$1,000,000.00).
- B. Payments may be contingent upon certification of the Recipient's financial management system in accordance with the standards specified in 2 CFR 200.
- C. The Grantee reserves the right to hold payment until adequate documentation has been provided by the Recipient and reviewed by the City. The Recipient agrees to the following provisions in satisfying the terms and conditions of this Agreement:
- D. Recipient shall submit written claims for reimbursement no less than monthly. All grants made under this Agreement shall be made on or before October 31, 2020.

5. NON-DISCRIMINATION IN CLIENT SERVICES

- A. The Recipient agrees to make all services available through this Agreement, and shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, or age:
 - i. Deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement.
 - ii. Provide any service(s) or other benefits to a qualified individual which are different, or are provided in a different manner, from those provided to others under this Agreement, separate treatment in any manner related to the receipt of any service(s), or other benefits provided under this Agreement.
 - iii. Deny any qualified individual an opportunity to participate in any program provided by this Agreement through the provision of service(s) or otherwise, or will afford the individual an opportunity to do so which is different from that afforded others under this Agreement.
- B. The Recipient shall abide by all provisions of Section 504 of the HEW Rehabilitation Act of 1973 prohibiting discrimination against handicapped individuals either through purpose or intent.

6. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities listed below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following representatives:

Grantee:

Recipient:

City Manager
City of Yakima
129 North 2nd Street
Yakima, WA 98901
(509) 575-6000

Jonathan Smith
Yakima County Development Association
10 North 9th Street
Yakima, WA 98901
(509) 575-1140

7. SPECIAL CONDITIONS

- A. Recipient shall formulate all application materials and Grantee shall approve said application materials prior to the granting of any funds under this Agreement.
- B. The grant amount to an applicant shall not exceed Ten Thousand Dollars. Grantee desires to serve as many small businesses as practicable while providing those businesses funds need to continue to operate beyond the COVID-19 pandemic.
- C. Priority should be given first to small businesses which have not received any other federal or state assistance for their business. In cases where assistance provided was less than \$10,000.00, a small business may request the difference between what it already received and the full \$10,000.00 and be given priority for that amount.
- D. Applicants must provide proof of a valid City of Yakima business license.
- E. Applicants must be a small business. A small business is defined, for purposes of this Agreement, as a sole proprietorship, partnership, limited liability company, or corporation with less than twenty employees (either part-time or full-time employees) located within the City of Yakima, legally in operation for at a minimum of 365 days prior to September 1, 2020, which wasn't able to operate, or wasn't (or still isn't) able to operate at 100% due to the required closures and opening restrictions due to COVID-19.
- F. YCDA shall determine the best course in reviewing applications.
- G. Funding should be granted on a rolling basis, until funds run out, but no grants should be awarded later than October 31, 2020.
- H. Recipient shall provide updates to the City Council upon request.

8. GENERAL CONDITIONS

The following requirements are applicable to all activities undertaken with CARES funds.

A. General Compliance

The Recipient agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all federal and/or state Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Recipient is an independent contractor.

C. Hold Harmless and Indemnification

- i. Recipient agrees that it is financially responsible for any audit exception or other financial loss to the Grantee which occurs due to its negligence or its failure to comply with the terms of this Agreement.
- ii. Recipient further agrees to defend, indemnify and hold harmless the Grantee, its elected and appointed officials, employees, and agents from and against any and all claims, demands and/or causes of action of any kind or character whatsoever arising out of or in connection with the performance of this Agreement by the Recipient, its employees, subcontractors, agents, or volunteers for any and all claims by any persons for alleged personal injury, death, or damage to their persons or property to the extent caused by the negligent acts, errors or omissions of the Recipient, its employees, agents, subcontractors, volunteers or representatives. In the event that any suit or claim for damages based upon such claim, action, loss, or damages is brought against the Grantee, the Recipient shall defend the same at its sole cost and expense; provided that the Grantee retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the Grantee and/or its officers, agents, and/or employees or any of them or jointly against the Grantee and the Recipient and its respective officers, agents, subcontractors, employees, volunteers or any of them, the Recipient agrees to fully satisfy the same and the Recipient shall reimburse the Grantee for any cost and expense which the Grantee has incurred as a result of such claim or suit, including, but not limited to attorneys' fees, costs and appeal costs and fees. The provisions of this section shall survive the expiration or termination of this Agreement.

D. Insurance

- i. The Recipient shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Recipient, its agents, representatives, or employees.
- ii. Recipient's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Recipient to the coverage provided by such insurance, or otherwise limit the Grantee's recourse to any remedy available at law or in equity.
- iii. Recipient shall obtain insurance of the types and coverage described below:
 - a. Commercial General Liability. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. Grantee shall be named as an additional insured under the Recipient's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

- b. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Recipient must purchase "extended reporting" coverage for a minimum of five (5) years after completion of services provided by this Agreement.
- c. Recipient's Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the Grantee. Any insurance, self-insurance, or self-insured pool coverage maintained by the Grantee shall be excess of the Recipient's insurance and shall not contribute with it. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- d. Recipient shall furnish the Grantee with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Recipient before commencement of the work.
- e. Recipient shall provide the Grantee with written notice of any policy cancellation within five (5) business days of their receipt of such notice.
- f. Failure on the part of the Recipient to maintain the insurance as required shall constitute a material breach of this Agreement, upon which the Grantee may, after giving five (5) business days' notice to the Recipient to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Grantee on demand, or at the sole discretion of the Grantee, offset against funds due the Recipient from the Grantee.
- g. If the Recipient maintains higher insurance limits than the minimums shown above, the Grantee shall be insured for the full available limits of Commercial General and Excess liability maintained by the Recipient, irrespective of whether such limits maintained by the Recipient are greater than those required by this Agreement or whether any certificate of insurance furnished to the Grantee evidences limits of liability lower than those maintained by the Recipient.
- h. The Recipient shall not use or disclose Personal Information, as defined in RCW 19.255.010, in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Recipient agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of Personal Information.

E. Grantee Recognition

The Recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Recipient

will include a reference to the support provided herein by Grantee in all publications, announcements, or marketing associated with the funds made available under this Agreement.

F. Amendments

The Grantee or Recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Recipient from its obligations under this Agreement.

G. Assignment and/or Subcontracting

The Recipient shall not assign or subcontract any portion of the services provided within the terms of this Agreement without obtaining prior written approval from the Grantee. The Grantee has the sole authority to decide whether assignment and/or subcontracting will be allowed. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment related to the Agreement.

H. Suspension or Termination

i. Termination for Cause. Grantee may suspend or terminate this Agreement if the Recipient materially fails to comply with any terms of this Agreement, which include, but are not limited to, the following:

- a. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, policies or directives as may become applicable at any time;
- b. Failure, for any reason, of the Recipient to fulfill in a timely and proper manner its obligations under this Agreement;
- c. Ineffective or improper use of funds provided under this Agreement; or
- d. Submission by the Recipient to the Grantee reports that are incorrect or incomplete in any material respect.

ii. Termination for Convenience. This Agreement may be terminated at any time, in whole or in part, upon the written agreement of Recipient and Grantee.

iii. Termination for Withdrawal, Reduction or Limitation of Funding. In the event that funding from the CARES Act is withdrawn, reduced or limited in any way after the effective date of this Agreement, and prior to its normal completion, Grantee may summarily terminate this Agreement as to the funds reduced or limited, notwithstanding any other termination provision of this Agreement. If the level of funding so reduced or limited is so great that the Grantee deems that the continuation of the program covered by this Agreement is no longer in the best interest of the public, the Grantee may summarily terminate this Agreement in whole notwithstanding any other termination provisions of this Agreement.

Termination under this section shall be effective upon receipt of written notice by the Recipient.

The Grantee agrees to promptly notify the Recipient of any proposed reduction in funding by Federal or other officials. The Recipient agrees that upon receipt of such notice it shall take appropriate and reasonable action to reduce its spending in the affected funding area so that expenditures do not exceed the funding level which would result if said proposed reduction became effective.

Upon termination of this Agreement under any section above, any CARES funds not already awarded through this Agreement shall revert to the City of Yakima. In the event that termination occurs as a result of Recipient's failure to comply with rules as outlined under subsections (G)(i), (ii), (iii), or (iv) above, Recipient shall return to the Grantee all funds received by Recipient which were expended in violation of the terms of this Agreement.

I. Close Out

In the event that this Agreement is terminated in whole or in part for any reason, the following provisions shall apply:

- i. Upon written request by the Recipient, Grantee shall make or arrange for payment to the Recipient of allowable costs not covered by previous payments.
- ii. The Recipient shall submit within fifteen (15) days after the date of termination of this Agreement all financial, performance and other reports required by this Agreement, and in addition, will cooperate in a program audit by the Grantee or its designee if requested by Grantee.
- iii. In the event a financial audit has not been performed prior to closeout of this Agreement, the Grantee retains the right to withhold a just and reasonable sum from the final payment to the Recipient after fully considering the recommendation on disallowed costs resulting from the final audit.

9. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

If the Agency is a governmental entity, the Agency shall comply with the requirements and standards of OMB Circular A-128, "Audits of State and Local Government," and Circular A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with 2 CFR Part 200.

If the Agency is not a governmental entity, the Agency shall comply with the requirements and standards of 2 CFR Part 200, and all other applicable federal laws, regulations, executive orders and guidelines.

B. Documentation and Recordkeeping

i. Records to be Maintained

The Recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the Objectives of the CARES Act;
- c. Records required to determine the eligibility of grant recipients;
- d. Records required to document the use of CARES funds;
- e. Financial records as required by 24 CFR 570.502 and 2 CFR 200; and
- f. Other records necessary to document compliance with any other applicable federal or state law or regulation.

ii. Retention

Required records shall be retained for a period of three (3) years after termination of this Agreement, except as follows: (1) Records that are the subject of audit findings shall be retained for three (3) years after the program ends or three years after such findings have been resolved, whichever is longer; and (2) records for nonexpendable property shall be retained for three (3) years after its disposition. Nonexpendable property is defined in 2 CFR 200.333.

iii. Client Data

- a. The Recipient shall maintain client data demonstrating client eligibility for services (grant funds) provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, number of employees, business financial information and other relevant business information, and a description of the grant provided and basis for grant amount. Such information shall be made available to Grantee monitors or their designees for review upon request.
- b. The use or disclosure by any party of a confidential information concerning a recipient or client for any purpose not directly connected with the Grantee's or the Recipient's responsibilities with respect to services provided under this Agreement is prohibited except on written consent of the recipient or client, their attorney or their responsible parent or guardian, or as otherwise provided by law.

iv. Inspection and Disclosure of Records

The Recipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Recipient's responsibilities with respect to services provided under this Agreement, or otherwise required by law, is prohibited unless written consent is obtained from such person receiving service.

The Agency acknowledges that this Agreement and any other information provided by it to the City and/or relevant to the program(s) described in the Exhibit(s) and Attachment(s) are subject to the Washington State Public Records Act, Chapter 42.56 RCW. Records relating to this Agreement shall at all times be subject to inspection by the Grantee. Recipient shall provide the Grantee sufficient, safe and proper facilities and/or send copies of the requested documents to the Grantee upon Grantee's request. All records related to Recipient's services under this Agreement must be made available to Grantee, upon request. They must be produced to third parties, if required pursuant to the Public Records Act, or by law. All records relating to Recipient's services under this Agreement must be retained by Recipient for the minimum period of time required pursuant to the Washington State Secretary of State's records retention schedule.

This section shall survive any expiration or termination of this Agreement.

v. Close-Outs

The Recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, deobligation of unused funds, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Recipient has control over CARES funds, including program income.

vi. Audits and Inspections

The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the Grantee, Federal, or State officials so authorized by law during the performance of this Agreement and during the period of retention specified in this Agreement.

- a. The Recipient will provide at or before the contract signing, upon request by Grantee, a copy of the Recipient's most recent audit. The Recipient will provide to the Grantee a copy of the Agency's most recent audit for each year in which a contract for use of CARES funds exists with the Grantee, if applicable. Failure to provide such audit will be considered a material breach of the Agreement and result in a refund to the Grantee of all moneys paid or due under the Agreement.
- b. Audit Requirements. Agencies receiving \$750,000.00 or more in federal funds will provide to the Grantee the above required audits conducted in a manner required by 2 CFR Part 200 Uniform Guidance—Subpart F.

vii. Financial Management. Such records shall identify adequately the source and application of funds for activities within this Agreement, in accordance with the applicable provisions federal or state law, regulation, executive order

or guidelines, including, but not limited to 2 CFR Part 200. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

viii. Access to Records.

- a. Recipient agrees that Grantee may carry out monitoring and evaluation activities so as to ensure compliance by Recipient with this Agreement, with any CARES compliance requirements, and with all other laws, regulations, and ordinances related to the performance hereof.
- b. Recipient agrees to provide Grantee with any data determined by Grantee to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.
- c. At any reasonable time and as often as Grantee may deem necessary, Recipient shall make its records available to the Grantee, federal or state auditors, or any of their authorized representatives, and shall permit them to audit, examine, and make excerpts and/or copies of the same. Recipient records shall include, but shall not be limited to, the following: payroll, personnel and employment records, procurement bidding documents, contracts, sales closing statements, applications, award notifications, receipts, requests for reimbursement, and invoices.
- d. Grantee shall have the right to review and audit all records of the Recipient pertaining to any payment by Grantee. Said records shall be maintained for a period of seven years after the completion of the project.
- e. The Recipient shall be required to make reasonable changes in the services as completed or to be completed if said services fall below the standards and specifications set forth in this Agreement and any attachments hereto.

C. Reporting and Payment Procedures

i. Reports.

The Recipient shall submit such reports as required by the Grantee at such times as required by the Grantee, including at any time after this Agreement has expired. Notwithstanding any other provision of this Agreement to the contrary, the reports required by the Grantee shall be submitted by the Recipient no less than on an every-other-month basis. Such reports shall also be submitted prior to contract completion. A final report shall be compiled upon termination of this Agreement or spend down of all CARES funding allocated in this Agreement.

ii. Program Income

There is no anticipated program income under this Agreement.

iii. Indirect Costs

Recipient shall be reimbursed for indirect costs, or any administrative costs associated with the grant program in an amount not to exceed Five Thousand Dollars (\$5,000.00).

iv. Payment Procedures

The Grantee will pay to the Recipient funds available under this Agreement based upon information submitted by the Recipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, if any, payments will be made for eligible expenses actually incurred by Recipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Recipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the Grantee on behalf of Recipient.

v. Return of Funds

The Recipient shall return to the Grantee all monies provided hereunder by the Grantee to the Recipient if any of the following occur:

- f. The Recipient materially changes the primary purpose and scope of the project as described in Section A above; or
- g. The Recipient is unable to continue and/or provide services as described in this Agreement.

D. Procurement Standards.

In awarding contracts pursuant to this Agreement, if applicable, but not including the grants awarded as part of the program, the Recipient shall comply with all applicable requirements of local and State law for awarding contracts, including but not limited to procedures for competitive bidding, contractor's bonds, and RCW 60.28.010, which addresses retained percentages. In addition, the Recipient shall comply with the requirements of the U.S. Office of Management and Budget, as applicable, relating to bonding, insurance and procurement standards; and all federal laws, regulations, executive orders and guidance documents. Where Federal standards differ from local or State standards, the stricter standards shall apply. The Federal standard for competitive bidding shall apply only if the applicable State or local standard for competitive bidding is greater than the federal standard.

E. Evaluation

The Recipient shall participate with the Grantee in any evaluation project or performance report required by a state or federal agency. Further, the Recipient agrees to participate with the Grantee in any reasonable evaluation project or performance report as requested by the Grantee. In either situation, the Recipient agrees to make available all information required by any such evaluation process.

10. PERSONNEL AND PARTICIPANT CONDITIONS

A. Nondiscrimination.

i. General:

The Recipient shall comply with all Federal, State and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, the presence of any sensory, mental or physical handicap or any other group protected under local, state or federal law existing or hereafter created. These requirements are specified in RCW chapter 49.60; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VI; Civil Rights Act of 1968, Title VIII; Executive Order 11063; Executive Order 11246; Section 3 of the Housing and Urban Development Act of 1968; Section 504 of the Rehabilitation Act of 1973; and, the Age Discrimination Act of 1975. Specifically the Recipient is prohibited from taking any discriminatory actions defined in the HUD Regulations at 24 CFR 570.602(b)(1) and shall take such affirmative and corrective actions as are required by the Regulations at 24 CFR 570.602(b)(4).

ii. Specific Discriminatory Actions Prohibited:

The Recipient may not, under any program or activity to which this Agreement may apply, directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

- (a) Deny any person facilities, services, financial aid, or other benefits provided under the program or activity;
- (b) Provide any persons with facilities, services, financial aid, or other benefits which are different, or are provided in a different form, from that provided to others under the same program or activity;
- (c) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit under the program or activity;
- (d) Restrict in any way access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid, or other benefits under the program or activity;
- (e) Treat any person differently from others in determining whether the person satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity; or
- (f) Deny any person any opportunity to participate in a program or activity as an employee.

The Recipient shall not use criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

The Recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, if applicable, may not make selections of such site or location that have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or of the HUD Regulations.

B. Notice

- i. The Recipient shall include the provisions of the appropriate subsections (a), (b), (c), (d), and (e) of this Section A above entitled "Nondiscrimination" as required by law, and shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or worker's representative of the commitments made in these subsections.
- ii. In advertising for employees, goods or services for the activities under this Agreement, the Recipient shall comply with all federal laws, regulations, executive orders and guidelines, including, but not limited to OMB 2CFR-200. Agencies shall be considered to be in compliance with this provision if at least one of the following steps is taken: (a) advertise in a minority publication in addition to publication of general circulation; (b) utilize a minority contractors bidding center; or (c) utilize a local affirmative action office and/or certified minority/women's business enterprise directory.

C. Lobbying.

The Recipient certifies, to the best of its knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer of employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The Recipient shall require that the language of this certification, or equivalent language, be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

D. Conflict of Interest

The Grantee may, by written notice to the Recipient:

- i. Terminate this Agreement if it is found, after due notice and an opportunity to respond, by the Grantee that gratuities in the form of entertainment, gifts, or otherwise offered or given by the Recipient, or agent or representative of the Recipient, to any officer, elected official or employee of the Grantee, with a view towards securing this Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this Agreement.
- ii. In the event this Agreement is terminated as provided in (i) above, Grantee shall be entitled to pursue the same remedies against the Recipient as it could pursue in the event of a breach of the Agreement by Recipient. The rights and remedies of the Grantee provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.
- iii. The Recipient warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. The Recipient further warrants and covenants that in the performance of this Agreement, no person having such interest shall be employed.

11. FEDERAL, STATE AND LOCAL PROGRAM REQUIREMENTS

A. Contractors and Suppliers:

- i. No contractor, subcontractor, union, or vendor engaged in any activity under this Agreement shall discriminate in the sale of materials, equipment or labor on the basis of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. Such practices include: employment, upgrading, demotion, recruiting, transfer, layoff, termination, pay rate, and advertisement for employment. (RCW Chap. 49.60; Executive Order 11246 as amended).
- ii. All firms and organizations described above shall be required to submit to the Recipient certificates of compliance demonstrating that they have, in fact, complied with the foregoing provisions; provided, that certificates of compliance shall not be required from firms and organizations with fewer than 25 employees or on contracts and/or yearly sales of less than \$10,000.00.
- iii. To the greatest extent feasible, the Recipient shall purchase supplies and services for activities under this Agreement from vendors and contractors whose businesses are located in the area served by CARES-funded activities or owned in substantial part by program area residents. (Section 3, Housing and Urban Development Act of 1968, as amended).
- iv. CARES funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or

subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

B. Other Federal Requirements.

The absence of mention in this Agreement of any other Federal requirements which apply to the award and expenditure of the Federal funds made available by this Agreement is not intended to indicate that those Federal requirements are not applicable to Recipient activities. The Recipient shall comply with all other Federal requirements relating to the expenditure of Federal funds, including but not limited to: The Architectural Barriers Act of 1968 (42 U.S.C. 4151), and the Hatch Act (5 U.S.C. Chapter 15). Additionally, the Recipient shall comply with the Federal requirements described by 24 CFR Part 570, Sections 600 through 603; Section 605; and Sections 607 through 612.

C. Nonsubstitution for Local Funding.

The CARES funding made available under this Agreement shall be used only for eligible program expenses.

D. Religious Organizations.

The Agency will comply with all federal requirements concerning religious organizations and the use of Community Block Grant funds. All services delivered must be dispensed in a clearly non-sectarian manner, devoid of any religious influence.

12. RULES OF CONSTRUCTION

In the event of an inconsistency in this Agreement/grant award unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- A. Appropriate provisions of state and federal statutes and regulations including CARES Act regulations.
- B. This Agreement.
- C. Exhibits to this Agreement, if any.
- D. City of Yakima Resolution approving this Agreement.
- E. Any other provisions whether incorporated by reference herein or otherwise, provided that nothing herein shall be construed as giving preference to provisions of this agreement/grant award over any provisions of law.

13. GOVERNING LAW AND VENUE

- A. The venue for any action to enforce or interpret this Agreement shall be in the Superior Court of Washington for Yakima County.
- B. This Agreement has been and shall be construed under the laws of the State of Washington.

14. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If it should appear that any provision hereof is in conflict with any federal or state statutory provision, said provision which may conflict therewith shall be deemed modified to conform to such statutory provision.

15. WAIVER

The Grantee's failure to act with respect to a breach by the Recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

16. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Recipient with respect to this Agreement.

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.

DATED this _____ day of September, 2020

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF YAKIMA

YAKIMA COUNTY DEVELOPMENT ASS'N

By: Robert Harrison, City Manager

By: Jonathan Smith, Director

ATTEST:

Sonya Claar-Tee, City Clerk