

CITY OF YAKIMA - AGREEMENT

Contractor YAKIMA HOUSING AUTHORITY
 Project Title Fruitvale Housing
 Contract Amount \$ 299,771.00
 Contract Period From: November 16th, 2022 To June 30, 2023
 DUNS No. (if applicable) 169011160 SAM No. (if applicable) _____

THIS AGREEMENT No. **DC2022-1/4100** (“Contract”) is entered into by the CITY OF YAKIMA (the “City”), and YAKIMA HOUSING AUTHORITY. (the “Contractor”) whose address is 810 North 6th Avenue, Yakima, Washington, 98902.

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
Washington State Department of Commerce – State Building Construction Account	See Contract Amount above	See Contract Period above

WHEREAS, the City has been advised that the foregoing are the current funding sources, funding levels and effective dates, and

WHEREAS, the City desires to have certain services performed by the Contractor as described in this Contract,

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually agree as follows:

1. Contractor understands and agrees that funds provided under this Contract may come from a federal source and agrees to comply with any and all additional applicable terms. In general, federal-specific terms are in italics.

- A. ***Contractor Capacity.*** Contractor agrees and confirms that it has the institutional, managerial and financial capacity to ensure proper planning, management and completion of the Scope of Work attached hereto as Exhibit 1.
- B. ***Technical Assistance.*** If, at any time, Contractor believes its capacity is compromised or Contractor otherwise needs any sort of assistance, it SHALL immediately notify the City. The City will make best efforts to provide timely technical assistance to the Contractor to bring the Contract into compliance.
- C. ***Compliance with Act.*** Contractor understands and agrees that funds provided under this Contract may only be used in compliance with section 603(c) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act, the U.S. Department of Treasury’s (“Treasury’s”) regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

D. Definitions.

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

ACCEPTANCE OR ACCEPTED -	A written determination by the City that the Contractor has completed the Work in accordance with the Contract.
CONTRACT AMENDMENT -	A written change to the Contract modifying, deleting or adding to the terms and conditions or Scope of Work, signed by both parties, with or without notice to the sureties.
CONTRACTOR -	The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the City for the performance of Work under the Contract.
CONTRACT SPECIALIST -	City of Yakima Employee who interfaces with team members, business owners, contractors, county project staff and others to assist in the administration of this Contract.
DAY -	Calendar day.
YMC -	The Yakima Municipal Code.
MEASURABLE AMOUNT OF WORK -	A definitive allocation of an employee's time that can be attributed to Work performed under this Contract, but that is not less than a total of one hour in any one-week period.
PERSON -	Includes individuals, associations, firms, companies, corporations, partnerships, or combination thereof, including joint ventures.
PROJECT MANAGER -	The individual designated by the City to manage the project on a daily basis and who may represent the City for Contract administration.
RCW -	The Revised Code of Washington.
SCOPE OF WORK (SOW) -	An exhibit to the Contract consisting of a written description of the Work to be performed.
SUBCONTRACTOR -	The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
SUBRECIPIENT -	An entity that uses the awarded funds to carry out a program for a public purpose specified in the authorizing statute or ordinance, as opposed to providing goods or services for the benefit of the City.

WORK -	Everything to be provided and done for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.
ADMINISTRATOR -	The Director of Finance.
Small Contractor or Supplier or “(SCS)” -	A business and the person or persons who own and control it that are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' personal net worth less than \$1,320,000 dollars.

2. Contract Services and Requirements, and Incorporated Exhibits.

The Contractor shall provide services and meet the requirements included in this Contract and in the following attached exhibits, each of which is incorporated herein by this reference:

EXHIBIT NAME	NUMBER/LETTER
Scope of Work	A
Price Attachment	B
Contractor’s Proposal	C
Civil Rights Certification	D
Lobbying Certification	E
Cost Certification	F

- A. **Scope of Eligible Expenditures.** *Funds shall only be used to pay or reimburse eligible expenditures as described in Exhibit A. No funds may be used to pay or reimburse expenditures reimbursed under any other federal or state program, or from any other third-party source.*
- B. **Contractor Responsibilities.** *The funds provided under the Contract may come from a federal source. Contractor agrees to administer the Contract consistent with the terms and conditions of this Contract, in accordance with section 603(c) of the Act, the Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing, as well as any other applicable federal laws and regulations. As part of the invoicing process, the Contractor shall provide the City with a “Cost Certification” that funding of this Contract was used for eligible expenditures. Contractor shall also provide the City with a “Civil Rights Certification” prior to payment for work authorized by this Contract.*
- C. **Reporting.** *Contractor shall provide the City with the following reports in a timely manner:*

i. Monthly / Quarterly Expenditure Report by the 10th of month following expenditure to facilitate required quarterly City reporting.

ii. Payment Request Report

iii. Closeout Report

3. Contract Term.

A. This Contract shall begin after the contract is fully executed by both parties, and shall terminate on June 30th, 2023, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

B. This Contract may be extended through December 31, 2026 in one-year increments upon agreement of the parties. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

4. Compensation and Method of Payment.

A. Compensation:

The City shall compensate the Contractor for satisfactory completion of the services and requirements as specified in this Contract and its attached exhibit(s).

B. Invoicing:

The Contractor shall submit invoices and all accompanying reports as specified in the attached exhibit(s), including its final invoice and all outstanding reports. The City shall endeavor to make payment not more than 60 days after a complete and accurate invoice is received.

C. Final Invoice:

The Contractor shall submit its final invoice and all outstanding reports as specified in this contract and its attached exhibit(s). If the Contractor's final invoice and reports are not submitted as required, the City will be relieved of all liability for payment to the Contractor of the amounts set forth in the final invoice or any later invoice.

D. Reimbursement for Travel:

The Contractor will not be reimbursed for travel unless otherwise specified within an Exhibit.

5. Internal Control and Accounting System.

The Contractor shall establish and maintain a system of accounting and internal controls that complies with the generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB), the Governmental Accounting Standards Board (GASB), or both as is applicable to the Contractor's form of doing business.

6. Debarment and Suspension Certification.

If this Contract is a covered transaction for purposes of federally funded grant requirements, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are

excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. Debarment status may be verified at <https://www.sam.gov> By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Yakima. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the City of Yakima, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while performing this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7. Maintenance of Records.

A. Accounts and Records:

- i. Contractor shall maintain ALL (100%) records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. These records shall be maintained for a period of six (6) years after the last date that all funds have been expended or returned to the City, whichever is later, to ensure proper accounting for all funds and compliance with the Contract.
- ii. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, or any other oversight entity, shall have the right of access to records (electronic and otherwise) of Contractor in order to conduct audits or other investigations.
- iii. The Contractor shall maintain for a period of six years after termination of this Contract accounts and records, including personnel, property, financial, and programmatic records and other such records the City may deem necessary to ensure proper accounting and compliance with this Contract.

B. Nondiscrimination and Equal Employment Records:

In accordance with the nondiscrimination and equal employment opportunity requirements set forth in Section 24, Nondiscrimination and Payment of a Living Wage below, the Contractor shall maintain the following for a period of six years after termination of this Contract:

- i. Records of employment, employment advertisements, application forms, and other data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
- ii. Records, including written quotes, bids, estimates or proposals, submitted to the Contractor by all entities seeking to participate in this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The City may visit the site of the work and the Contractor's office to review these records. The Contractor shall provide all help requested by the City during such visits and make the foregoing records available to the City for inspection and copying. At all reasonable times, the Contractor shall provide to the City, the state, and/or federal agencies or officials access to its facilities—including those of any subcontractor assigned any portion of this Contract in order to monitor and evaluate the services provided under this Contract. The City will give reasonable advance notice to the Contractor in the case of audits to be conducted by the City. The Contractor shall comply with all record keeping requirements of any applicable federal rules, regulations or statutes included or referenced in the contract documents. If different from the Contractor's address listed above, the Contractor shall inform the City in writing of the location of its books, records, documents, and other evidence for which review is sought, and shall notify the City in writing of any changes in location within 14 days of any such relocation.

8. Evaluations and Inspections.

A. Subject to Inspection, Review, or Audit:

The records and documents with respect to all matters covered by this Contract shall be subject at all time to inspection, review, or audit by the City and/or federal/state officials authorized by law during the performance of this Contract and for six years after termination hereof, unless a longer retention period is required by law.

B. Medical Records:

If applicable, medical records shall be maintained and preserved by the Contractor in accordance with state and federal medical records statutes, including but not limited to RCW [70.41.190](#), [70.02.160](#), and standard medical records practice. The Contractor shall also be responsible for the maintenance and disposal of such medical records.

C. Contract Monitoring

The Contractor and the City shall engage in monitoring visits to assess the Contractor's compliance with contract requirements, quality, and practices. The City will execute monitoring visits in accordance with the applicable frequency, as prescribed by the controlling Exhibit under this Contract. The Contractor shall cooperate with the City and its agents to assess the Contractor's performance under this Contract. At the request of the City, the Contractor shall implement a plan to remedy any items of noncompliance identified during the monitoring process.

The results and records of these processes shall be maintained and disclosed in accordance with [RCW Chapter 42.56](#).

D. Performance, Measurement and Evaluation

The Contractor shall submit performance metrics and program data as set forth in Exhibits to this Contract. The Contractor shall participate in evaluation activities as required by the City and shall make available all information required by any such performance measurement and evaluation processes.

E. Unauthorized Disclosure:

The Contractor agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

9. **Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).**

The Contractor shall not use protected health information created or shared under this Contract in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions. Contractor shall read and maintain compliance with all HIPAA requirements at the U.S. Office of Civil Rights website: <https://www.hhs.gov/hipaa/index.html>

10. **Financial Report Submission.**

The Contractor is required to submit a financial reporting package as described in A through C below. All required documentation must be submitted by email to jennifer.ferrer@yakimawa.gov by the stated due date.

- A. If the Contractor is a Non-Federal entity as defined in 2 CFR Part 200.69, and expends \$750,000 or more in Federal awards during its fiscal year, then the Contractor shall meet the audit requirements in 2 CFR Part 200 Subpart F. Audit packages are due to the County within nine months after the close of the Contractor’s fiscal year.
- B. If the Contractor is a local government in the State of Washington and is not subject to the requirements in subsection A, the Contractor shall submit audited financial statements that are in accordance with the Washington State Auditor’s Office requirements. Financial statement audits are due to the County within 150 days after the close of the Contractor’s fiscal year end as required by RCW 43.09.230.
- C. If the Contractor is not subject to the requirements in subsection A or B, the following apply:

Entity Type	Non-Profit		For Profit	
Gross Revenue	Gross Revenue Under <u>\$3M</u> on average in the previous three fiscal years.	Gross Revenue Over <u>\$3M</u> on average in the previous three fiscal years.	Gross Revenue Under <u>\$3M</u> on average in the previous three fiscal years.	Gross Revenue Over <u>\$3M</u> on average in the previous three fiscal years.
Required Documentation	<ul style="list-style-type: none"> • Form 990 within 30 days of its being filed; and • A full set of annual internal financial statements 	Audited financial statements prepared by an independent Certified Public Accountant or Accounting Firm	<ul style="list-style-type: none"> • Income tax return; and • A full set of annual internal financial statements 	Audited financial statements prepared by an independent Certified Public Accountant or Accounting Firm
Due Date	Within 30 calendar days from the forms being filed.	Within nine months following the close of the Contractor’s fiscal year.	Within 30 calendar days from the forms being filed.	Within nine months following the close of the Contractor’s fiscal year.

D. Waiver:

A Contractor that is not subject to the requirements in subsection A may, in extraordinary circumstances, request, and in the City's sole discretion be granted, a waiver of the audit requirements. Such requests are made to the City to Jennifer Ferrer-Santa Ines, jennifer.ferrer@yakimawa.gov for review. If approved by the City, the Contractor may substitute for the above requirements other forms of financial reporting or fiscal representation certified by the Contractor's Board of Directors, provided the Contractor meets the following criteria:

- i. Financial reporting and any associated management letter show no reportable conditions or internal control issues; and
- ii. There has been no turnover in key staff since the beginning of the period for which the financial reporting was completed.

11. Corrective Action.

If the City determines that the Contractor has failed to comply with any terms or conditions of this Contract, or the Contractor has failed to provide in any manner the work or services (each a "breach"), and if the City determines that the breach warrants corrective action, the following procedure will apply:

A. Written Notification:

The City will notify the Contractor in writing of the nature of the breach.

B. Contractor's Corrective Action Plan:

The Contractor shall respond with a written corrective action plan within fourteen days of its receipt of such notification unless the City, at its sole discretion, extends in writing the response time. The plan shall indicate the steps being taken to correct the specified breach and shall specify the proposed completion date for curing the breach. This date shall not be more 30 days from the date of the Contractor's response, unless the City, at its sole discretion, specifies in writing an extension to complete the corrective actions.

C. City's Determination of Corrective Action Plan Sufficiency:

The City will determine the sufficiency of the Contractor's proposed corrective action plan, then notify the Contractor in writing of that determination. The determination of sufficiency of the Contractor's corrective action plan shall be at the sole discretion of the City.

D. Termination or Suspension:

If the Contractor does not respond within the appropriate time with a corrective action plan, or the Contractor's corrective action plan is determined by the City to be insufficient, the City may terminate or suspend this Contract in whole or in part pursuant to Section 13.

E. Withholding Payment:

In addition, the City may withhold any payment to the Contractor or prohibit the Contractor from incurring additional obligations of funds until the City is satisfied that corrective action has been taken or completed; and

F. Non-Waiver of Rights:

Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 13, Subsections B, C, and D.

G. **Remedial Actions:** *In the event of Contractor's noncompliance with section 603(c) of the Act, Treasury's regulations implementing that section, guidance issued by Treasury regarding the foregoing, or any other applicable federal laws or regulations, Treasury may take available remedial actions as set forth in 2 C.F.R. 200.339.*

H. **Recoupment:**

- i. ***Contractor agrees that it is financially responsible for and will repay the City any and all indicated amounts following an audit exception which occurs due to Contractor's failure, for any reason, to comply with the terms of this Contract. This duty to repay the City shall not be diminished or extinguished by the termination of the Contract.***
- ii. ***In the event of a violation of section 603(c) of the Act, the funds shall be subject to recoupment by the City.***
- iii. ***Any funds paid to Contractor (1) in excess of the amount to which Contractor is authorized to retain under the terms of the Contract; (2) that are determined by the Treasury Office of Inspector General to have been misused; (3) are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act; or (4) are otherwise subject to recoupment by the City, and have not been repaid by Contractor to the City shall constitute a debt to the City.***
- iv. ***Any debts determined to be owed the City must be paid promptly by the Contractor. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the City knowingly or improperly retains funds that are a debt. The City will take any actions available to it to collect such a debt.***

12. **Dispute Resolution.**

The parties shall use their best, good-faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will make a good faith effort to continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve the dispute under this section.

13. **Termination.**

A. Termination for Convenience:

This Contract may be terminated by the City without cause, in whole or in part, at any

time during the term specified in Section 3, Contract Term above, by providing the other party 30 calendar days advance written notice of the termination. The Contract may be suspended by the City without cause, in whole or in part, at any time during the term specified in Section 3. above, by providing the Contractor 30 calendar days advance written notice of the suspension.

B. Termination for Default:

The City may terminate or suspend this Contract, in whole or in part, upon ten days advance written notice if: (1) the Contractor breaches any duty, obligation, or service required pursuant to this Contract and either (a) the corrective action process described in Section 11 fails to cure the breach or (b) the City determines that requiring a corrective action plan is impractical or that the duties, obligations, or services required herein become impossible, illegal, or not feasible. If the Contract is terminated by the City pursuant to this Subsection 13.B., the Contractor shall be liable for damages, including any additional costs of procuring similar services from another source.

If the termination results from acts or omissions of the Contractor, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Contractor shall return to the City immediately any funds, misappropriated or unexpended, that have been paid to the Contractor by the City.

C. Termination for Non-Appropriation:

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section 3, the City may, upon ten days advance written notice to the Contractor, terminate or suspend this Contract in whole or in part.

If the Contract is terminated or suspended as provided in this Section: (1) the City will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination or suspension; and (2) the Contractor shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination or suspension.

Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the City Council and/or other identified funding source(s) of sufficient funds to support the activities described in the Contract. If such appropriation is not approved, this Contract will terminate at the close of the current appropriation year. The current funding sources associated with this Contract are specified on page one.

If the Contract is suspended as provided in this Section, the City may provide written authorization to resume activities.

D. Non-Waiver of Rights:

Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or by law or equity that either party may have if any of the obligations, terms, and conditions set forth in this Contract are breached by the other party.

14. Hold Harmless and Indemnification.

A. Duties as Independent Contractor:

In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the City for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a City employee under state or local law. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall release, protect, indemnify, defend and save harmless the City, its elected and appointed officials, officers, agents, employees, representatives, insurers, attorneys, and volunteers from and against any and all claims, costs, damages, losses, expenses, suits, arbitration actions, investigations, and regulatory or other governmental proceedings whatsoever arising from, occurring, relating to, or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, (2) the Contractor's failure to pay appropriate prevailing wages; and/or (3) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract. The City's right to indemnification includes attorneys' fees and costs associated with establishing the right to indemnification hereunder in favor of the City.

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the City immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

B. Intellectual Property Infringement:

For purposes of this section, claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

C. Nondisclosure of Data:

Data provided by the City either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the City data in any form without the prior express written approval of the City.

D. Non-Disclosure Obligation:

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as “Confidential”, “Proprietary” or “Business Secret”. The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the City or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the City’s or the third party’s confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the City of such requirement prior to disclosure.

E. Indemnification:

To the maximum extent permitted by law, Contractor shall, at its cost and expense, protect, defend, indemnify and hold harmless the City, its elected and appointed officials, directors, officers, employees, agents, representatives, insurers, attorneys, and volunteers, from and against any and all demands, liabilities, causes of action, costs and expenses (including attorney’s fees), claims, judgments, or awards of damages, arising out of or in any way resulting from the acts or omissions of Contractor, its directors, officers, employees, or agents, relating in any way to the Contractor’s performance or nonperformance under the Contract, or the acts, failures to act, errors or omissions of the Contractor, or any of Contractor’s agents or subcontractors, in performance of this Contract, unless and except the claims are caused by the City’s sole negligence. These indemnification obligations shall survive the termination of the Contract. The Contractor agrees that its obligations under this paragraph extend to any demands, liabilities, causes of action, or claims brought by, or on behalf of, any of its employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under any industrial insurance act, including [Title 51 RCW](#), other Worker’s Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the City and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to its indemnity obligation; and shall pay all defense expenses, including reasonable attorney’s fees, expert fees and costs incurred by the City on account of such litigation or claims. If the City incurs any judgment, award, and/or cost arising therefrom including reasonable attorney’s fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor. The City’s right to indemnification includes attorney’s fees and costs associated with establishing the right to indemnification hereunder in favor of the City.

F. Return of Unused Funds: If Contractor has any unspent funds on hand as of the earlier of December 31, 2024, or the termination of this Contract under Section 13,

Contractor shall return all unspent funds to the City within ten (10) calendar days.

15. **False Statements.**

Contractor understands that making false statements or claims in connection with this Contract may be a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal or city awards or contracts, and/or any other remedy available by law.

16. **Publications.**

Any publications produced with funds from this Contract must display the following language: "This project [is being][was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to the City of Yakima, Washington by the U.S. Department of the Treasury."

17. **Disclaimer by the City and United States.**

- A. ***The United States has expressly disclaimed any and all responsibility or liability to the City or third persons for the actions of the City or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of the award of Federal funds to the City under section 603(c) of the Act, or any contract or subcontract under such award.***
- B. ***The City expressly disclaims any and all responsibility or liability to the Contractor or third persons for the actions of the Contractor or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Contract or any other losses resulting in any way from the performance of the Contract, or any subcontract thereto.***
- C. ***This Contract does not in any way establish an agency relationship between or among the United States, the City, and/or Contractor.***

18. **Protection for Whistleblowers.**

- A. ***In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.***
- B. ***The list of persons and entities referenced in the paragraph above includes the following:***
 - i. ***A member of Congress or a representative of a committee of Congress;***
 - ii. ***An Inspector General;***

- iii. The Government Accountability Office;*
- iv. A Treasury employee responsible for contract or grant oversight or management;*
- v. An authorized official of the Department of Justice or other law enforcement agency;*
- vi. A court or grand jury; or*
- vii. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.*

C. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

19. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its their employees when operating company-owned, rented or personally owned vehicles.

20. Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 FR 51225 (October 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and to establish workplace safety policies to decrease accidents caused by distracted drivers.

21. Insurance Requirements.

Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability, errors and omissions, will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

A. Commercial Liability Insurance.

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of commercial liability insurance with a 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. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. 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 the Contract. The policy shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys 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 prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted to the State of Washington. The requirements contained herein, as well as the City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

B. Automobile Liability Insurance.

Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of automobile liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. 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 of Yakima, its elected and appointed officials, employees, agents, attorneys 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 prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract. The business auto liability shall include Hired and Non-Owned coverage if necessary.

C. Employer's Liability (Stop Gap).

Contractor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability Insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract including claims resulting from negligent acts of all subcontractors. Contractor is responsible to ensure subcontractors have insurance as needed. Failure of subcontractors to comply with insurance requirements does not limit Contractor's liability or responsibility.

D. Professional Service

Contractor shall provide evidence of Professional Liability Insurance covering professional errors and omissions. Such policy must provide the following minimum limits: \$2,000,000.00 per claim. If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract.

E. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

22. Assignment.

Contractor shall not assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the City, at its sole discretion. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party upon the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

If at any time during the Contract term the Contractor experiences a change in its name or federal tax status either through acquisition, novation, assignment, re-organization or some other change that affects its Taxpayer Identification Number (TIN) or Tax Reporting Name, it shall notify the City of Yakima immediately upon the information becoming publicly available. This notification shall be sent by the Contractor to the current City of Yakima Contract Specialist via email along with:

- A. Any official announcements from the firm's representative(s) regarding the changes;
- B. A new City of Yakima W-9 Form;
- C. A current statement, listing of unfilled orders and electronic versions of all outstanding invoices and credit memos at the time of the change shall be provided to the Contract Specialist as soon as possible.

Any delay on the part of the Contractor to provide these items to the Contract Specialist may result in the delay of payment and orders. The City may create a new contract number to

replace the existing one. All future orders and Contracts Amendments will reference the new contract number.

23. Subcontracting.

A. Written Consent of the City:

The Contractor shall not subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the City, which consent is at the sole discretion of the City. The City's consent must be sought in writing by the Contractor not less than 15 days prior to the date of any proposed subcontract.

The rejection or approval by the City of any subcontractor or the termination of a subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the City.

In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to the City for any breach in the performance of Contractor's duties.

The City has no contractual obligations to any subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its subcontractors.

B. "Subcontract" Defined:

"Subcontract" shall mean any agreement between the Contractor and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

C. Required Clauses for Subcontracts:

The Contractor shall include Sections:

Section #	Description
1	Contractor capacity, technical assistance, compliance with Act and Definitions section
5	Internal Control and Accounting System
7	Maintenance of Records
8	Evaluations and Inspections
11	Financial Report Submission
14	Hold Harmless and Indemnification
15	False Statements
16	Publications
17	Disclaimer by the County and United States
18	Protection of Whistleblowers
19	Increasing Seat Belt Use in the United States
20	Reducing Text Messaging While Driving
21	Insurance Requirements
23	Subcontracting
24	Nondiscrimination and Payment of a Living Wage

25	Conflict of Interest
34	Services Provided in Accordance with Law and Rule and Regulation
35	Applicable Law
40	Payment Procedures: Prompt Payment for Subcontractors
46	Background Checks
47	Subaward Language

in every subcontract or purchase agreement for services that relate to the subject matter of this Contract.

D. Required Language for Subcontracts:

The Contractor shall include the following language verbatim in every subcontract for services which relate to the subject matter of this Contract:

“Subcontractor shall protect, defend, indemnify, and hold harmless the City of Yakima, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that the City of Yakima is a third-party beneficiary to its Contract with Contractor and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.”

24. Nondiscrimination.

A. The Contractor shall comply with all applicable federal, state and local laws regarding discrimination, including those set forth in this Section.

B. Nondiscrimination:

During performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of the employee's or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification. The Contractor will make equal employment opportunity efforts to ensure that applicants and employees are treated equitably, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age.

C. Equal Employment Opportunity Efforts:

The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause.

D. Nondiscrimination in Subcontracting Practices:

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in City contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

E. Sanctions for Violations:

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

25. Conflict of Interest.

Contractor understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Contractor and subrecipients must disclose in writing any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

26. Equipment Purchase, Maintenance, and Ownership.

A. Equipment Maintenance:

The Contractor agrees that when Contract funds are used to pay for all or part of the purchase costs of any equipment that costs \$5,000 or more per item, and the purchase of such equipment is identified in an exhibit to this Contract, such equipment is, upon the purchase or receipt, the property of the City and/or federal/state government. The Contractor shall be responsible for all proper care and maintenance of the equipment, including securing and insuring such equipment.

B. Equipment Ownership:

The Contractor shall ensure that all such equipment is returned to the City or federal/state government upon termination of this Contract unless otherwise agreed upon by the parties.

27. Proprietary Rights.

A. Ownership Rights of Materials Resulting from Contract:

Except as indicated below or as described in an Exhibit, the parties to this Contract hereby agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the City. To the extent that any rights in such materials vest initially with the Contractor by operation of law or for any other reason, the Contractor hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to the City. The City agrees to and does hereby grant to the Contractor a perpetual, irrevocable, nonexclusive, and royalty-free license to use and create derivative works, according to law, any material or article and use any method that may be developed as part of the work under this Contract.

B. Ownership Rights of Previously Existing Materials:

The Contractor shall retain all ownership rights in any pre-existing patentable or copyrightable materials or articles that are delivered under this Contract, but do not originate from the work described herein. The Contractor agrees to and does hereby grant to the City a perpetual, irrevocable, nonexclusive, and royalty-free license to use and create derivative works, according to law, any pre-existing material or article and use any method that may be delivered as part of the work under this Contract.

C. Continued Ownership Rights:

The Contractor shall sign all documents and perform other acts as the City deems necessary to secure, maintain, renew, or restore the rights granted to the City as set forth in this section.

28. Political Activity Prohibited.

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

29. Future Support.

The City makes no commitment to support contracted services and assumes no obligation for future support of the contracted activity(-ies), except as expressly set forth in this Contract.

30. Entire Contract.

The parties agree that this Contract is the complete expression of the described subject matter, and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of this Contract.

31. Contract Amendments.

Either party may request changes to this Contract. Proposed changes that are mutually agreed upon shall be incorporated only by written amendments to this Contract.

32. Notices.

Whenever this Contract provides for notice by one party to another, such notice shall be in

writing and directed to each party's contact representative indicated within the contract exhibits. Any time within which a party must take some action shall be computed from the date that any associated required notice is received by that party.

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

CITY OF YAKIMA	CONTRACTOR
City of Yakima c/o Joan Davenport 129 N. 2 nd Street Yakima, WA 98901	The Housing Authority of the City of Yakima, c/o Lowel Krueger 810 N. 6 th Ave Yakima, WA 98902
City of Yakima c/o City Manager Bob Harrison 129 N. 2 nd Street Yakima, WA 98901	The Housing Authority of the City of Yakima, c/o Susan Wilson 810 N. 6 th Ave Yakima, WA 98902

33. Services Provided in Accordance with Law and Rule and Regulation.

The Contractor and any subcontractor agree to abide by the laws of the state of Washington, rules and regulations promulgated thereunder, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

If there is an irreconcilable conflict between any of the language contained in any exhibit or attachment to this Contract, the language in the Contract shall control over the language contained in the exhibit or the attachment, unless the exhibit provision expressly indicates that it controls over inconsistent contract language. If there is conflict among requirements set forth in exhibits, language contained in the lower numbered exhibit shall control unless the higher numbered exhibit provision expressly indicates that it controls over inconsistent lower numbered exhibit language.

34. Applicable Law.

A. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action hereunder shall be in the Superior Court for Yakima County, Washington.

B. Contractor agrees to comply with the requirements of section 603 of the Act, the Treasury's regulations implementing that section, and guidance issued by

Treasury regarding the foregoing. Contractor also agrees to comply with all other applicable federal laws, regulations, and executive orders, and Contractor shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this Contract.

- C. Federal regulations applicable to this award include, without limitation, the following:**

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, including the following:

- i. Subpart A, Acronyms and Definitions;**
- ii. Subpart B, General Provisions;**
- iii. Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards;**
- iv. Subpart D, Post-Federal Award Requirements;**
- v. Subpart E, Cost Principles; and**
- vi. Subpart F, Audit Requirements.**

Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

New Restrictions on Lobbying, 31 C.F.R. Part 21.

Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

Generally applicable federal environmental laws and regulations.

Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's Implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;***
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;***
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;***
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and***
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto;***
- vi. Hatch Act. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits certain political activities of federal employees, as well as certain other employees who work in connection with federally funded programs.***

D. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (2 CFR 183)

- i. The Contractor must exercise due diligence to ensure that none of the funds, including supplies and services, received under this Contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities. The Contractor must terminate or void in whole or part any subcontract with a person or entity listed in the System Award Management Exclusions (SAM) as a prohibited or restricted sources pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subcontract.***
- ii. The Federal awarding agency has the authority to terminate or void this Contract, in whole or in part, if the Federal awarding agency becomes aware that the Contractor failed to exercise due diligence as required by paragraph A of this clause or if the Federal awarding agency becomes aware that any funds received under this Contract have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.***

iii. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the Contractor and its Subcontracts to the extent necessary to ensure that funds, including supplies and services, available under this Contract are not provided, directly or indirectly, to a person or entity that is actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

iv. The Contract must include the substance of this clause, including paragraph, in subcontracting agreements that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

E. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (CFR 200.216)

i. Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

ii. Contractor and Subcontractor are prohibited from obligating or expending contract funds to:

a. Procure or obtain;

b. Extend or renew a contract to procure or obtain; or

c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

2. Telecommunications or video surveillance services provided by such entities or using such equipment.

3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

F. DOMESTIC PREFERENCES FOR PROCUREMENTS (CFR 200.322)

i. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracting agreements and purchase orders for work or products under this contract.

- ii. For purposes of this section:
 - a. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
 - b. “Manufactured products” means items and construction material composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

35. No Third-Party Beneficiaries.

Except for the parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a party hereto.

36. Non-Waiver of Breach.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. No action or failure to act by the City shall constitute a waiver of any right or duty afforded to the City under the Contract; nor shall any such action or failure to act by the City modify the terms of the Contract or constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the City in writing.

37. Emergency Response Requirements.

Within three months of the execution of this Contract, the Contractor shall prepare and make available to the City upon request, the necessary plans, procedures and protocols to:

- A. Respond to and recover from a natural disaster or major disruption to Contractor operations such as a work stoppage.
- B. Continue operations during a prolonged event such as a pandemic.

If the Contractor does not have any such plan as of the start of this Contract, the Contractor may request (i) an extension of the time needed to create a plan, and (ii) for assistance from the City in preparing such a plan.

At a minimum, any plans, procedures, or protocols described in this section must include how the Contractor plans to continue to provide the services described in or funded by this Contract.

38. Contractor Certification.

By signing this Contract, the Contractor certifies that, in addition to agreeing to the terms and conditions provided herein, it has read and understands all contracting requirements as contained in this Contract and the Exhibits and Attachments hereto.

39. Payment Procedures; Prompt Payment of Subcontractors.

For Work Accepted by the City the Contractor shall furnish invoices to City of Yakima. All

invoices shall be sent to the City of Yakima c/o Joan Davenport at 129 North 2nd Street, Yakima, Washington, 98901. All invoices shall contain the following information:

- A. Invoice date
- B. Itemized account of hours worked, showing unit number of hours and per-hour rate
- C. Purchase order number (if provided by City of Yakima)
- D. Ship to address/location
- E. Remit address
- F. Item number(s)
- G. Description of supplies or services
- H. Quantities
- I. Unit prices
- J. Subtotal and totals amount
- K. Discount terms or amount, if applicable
- L. Applicable sales tax with correct tax rate based on destination
- M. Any other information requested by the City

For each item invoiced, provide the complete description of the products, services, phases or milestones, hours worked and Contract hourly rates, or authorized fees.

The City will not be bound by prices contained in an invoice that are higher than those in Exhibit B, or if not used as part of this Contract, then the current price list for this Contract approved by the City. Within thirty (30) Days after receipt of an invoice, the City shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the City will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the City.

40. Pricing.

Prices shall remain firm for the duration of the Contract. The Contractor may request a price change(s) in writing delivered to the City. The Contractor shall provide documentation satisfactory to the City in support of its request. The City reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about

modifications to the request, or deny the request in its entirety. Any change in pricing granted by the City shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

41. Shipping Charges

All prices shall include freight FOB to the designated delivery point. The City shall reject requests for additional compensation for freight charges.

42. Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract; provided, however, "force majeure" shall not include the COVID-19 pandemic which is ongoing as of the date of the execution of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the City shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

43. Severability.

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

44. Background Checks.

Contractor warrants and represents that each and every Contractor employee can meet the following requirements: (a) No convictions within the past ten (10) years for crimes involving computers, moral turpitude, including fraud, perjury, dishonesty; and (b) No adverse employment actions within the past ten (10) years regarding dishonesty or the use or misuse of computers.

Contractor employees needing access to secure areas, records, or systems may be required to complete a security/background check by the City. The City may require Contractor's employees, agents, consultants or Subcontractors to complete a brief questionnaire and complete fingerprinting as part of the investigation process. The required background check will review and evaluate driving records, criminal records, employment histories, military records, personal and employment references and related information. Contractor employees failing the background check may, at the sole discretion of the City, be restricted from working within secured areas or with City systems in any capacity. The Contractor will assign

alternative staff who have passed the background check to meet the requirements of the Contract.

45. **Subaward Language.**

Pursuant to 2 C.R.F. Part 200.320, an agency must make a determination whether the scope of work falls under a Subrecipient or Contractor relationship. The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

A. Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

i. Determines who is eligible to receive what Federal assistance;

ii. Has its performance measured in relation to whether objectives of a Federal program were met;

iii. Has responsibility for programmatic decision making;

iv. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

v. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

B. Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

i. Provides the goods and services within normal business operations;

ii. Provides similar goods or services to many different purchasers;

iii. Normally operates in a competitive environment;

iv. Provides goods or services that are ancillary to the operation of the Federal program; and

v. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

- C. Use of Judgment in Making Determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.**

If the agency determines that the scope of work falls under a subrecipient relationship, all of the information below must be included in any subaward agreement:

(i) Subrecipient agency name (which must match the name associated with its unique entity identifier);	The Housing Authority of the City of Yakima
(ii) Subrecipient agency's unique entity identifier (i.e. DUNS);	169011160
(iii) Award Identification Number	22-96720-015
(iv) Award Date;	09/26/2022
(v) Subrecipient agency Period of Performance Start and End Date;	11/16/2022 – 06/30/2023
(vi) Amount of Funds Obligated to the subrecipient agency by this action;	299,771
(x) Name of awarding agency, pass-through entity, and contact information for awarding official	Awarding Agency: Washington State Department of Commerce- Local Government Division, Growth Management Unit Connecting Housing to Infrastructure Program (CHIP) Pass-Through Entity: CITY OF YAKIMA Jennifer Ferrer-Santa Ines City of Yakima Finance Director Jennifer.Ferrer@yakimawa.gov
Is the agency a subrecipient for the purposes of this agreement?	Yes

The subawardee must be in compliance with the below and must note the required information in their subaward agreements:

- (1) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and**
- (2) Appropriate terms and conditions concerning closeout of the subaward.**
- (3) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;**
- (4) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial**

and performance reports;

- (5) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:**

 - (a) The subrecipient's prior experience with the same or similar subawards;**
 - (b) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;**
 - (c) Whether the subrecipient has new personnel or new or substantially changed systems; and**
 - (d) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).**
- (6) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.**
- (7) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:**

 - (a) Reviewing financial and performance reports required by the pass-through entity.**
 - (b) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.**
 - (c) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.**
- (8) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:**

 - (a) Providing subrecipients with training and technical assistance on program-related matters; and**
 - (b) Performing on-site reviews of the subrecipient's program operations;**

(c) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

- (9) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.***
- (10) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.***
- (11) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.***

46. Affordability Covenant, Requirements, and Monitoring

- A. Contractor agrees and acknowledges that pursuant to the grant funding it is required to maintain the property as affordable rental units for the required term. Contractor shall sign and record an Affordability Covenant as part of this agreement.
- B. The property is subject to ongoing compliance requirements of the CHIP program for twenty-five years from the date construction is complete, which may correspond to the date on which a certificate of occupancy is granted for the last housing unit. During this compliance period, Contractor will assure continued compliance with CHIP requirements. Contractor, or any other party bound, directly or indirectly by the obligations herein, shall provide to the City written verification or such other written documentation as may be required by the City or CHIP program requirements, to evidence and substantiate the qualification of any and all persons claiming to be eligible lessees of the property, or, in the case of a property transfer, eligible purchasers, if requested by the City. All such evidence shall be satisfactory to the City in its sole and absolute discretion. Each party agrees to execute and deliver to the other party any documents that are necessary or reasonably necessary to carry out the purposes and intent of this section.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions of this Contract:

CITY OF YAKIMA

YAKIMA HOUSING AUTHORITY

Robert Harrison, City Manager

Lowel Krueger Executive Director

Date

Date

EXHIBIT A- SCOPE OF WORK

The Yakima Housing Authority will be reimbursed for a total of \$299,771 for water and sewer system development charges for the Fruitvale Housing Project, a new affordable housing project that serves and benefits low-income households.

Reimbursements will not exceed \$299,771, according to Price Attachment, Exhibit B, below.

EXHIBIT B PRICE ATTACHMENT

Water – System Development Charges	\$178,385.00
Sewer - System Development Charges	\$121,386.00
Stormwater- System Development Charges	\$ 0
Total System Development charges	\$ 299,771.00

EXHIBIT C- EXECUTED CONTRACT

Capital Agreement between City of Yakima & Washington State Department of Commerce through the Connecting Housing to Infrastructure Program (CHIP) using State Capital Funds.

RESOLUTION NO. R-2022-130

A RESOLUTION accepting \$299,771.00 through the Connecting Housing to Infrastructure Program (CHIP) to be administered by the City of Yakima's Community Development Department.

WHEREAS, the City of Yakima was granted a total of \$299,771.00 from the Connecting Housing to Infrastructure Program (CHIP) to financially assist Yakima Housing Authority in its construction of affordable housing; and

WHEREAS, with this grant funding, Yakima Housing Authority will pay for sewer and water system development charges for its new affordable housing project; and

WHEREAS, the grant contract provides funding for utility system development charges; and

WHEREAS, the City Council must accept the grants' terms and conditions and approve the Grant Agreements to obtain the funding to assist Yakima Housing Authority; and

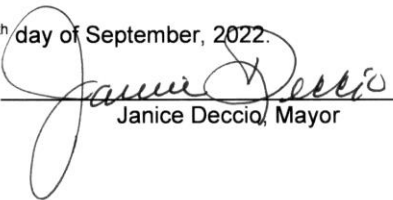
WHEREAS, the City Council finds that it is in the best interest of the City of Yakima and residents to accept the \$299,771.00 in grants from the Washington State Department of Commerce, and authorizes the City Manager to enter into a Grant Agreement with the Washington State Department of Commerce to financially assist the Yakima Housing Authority Project;

Now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

1. The City Council approves the Capital Agreement with City of Yakima through Connecting Housing to Infrastructure Program (CHIP) using State Capital Funds, contract number 22-96720-015, in the amount of \$299,771.00 for system development charges, and authorizes the City Manager, or their designee, to execute and administer such Agreement with the Washington State Department of Commerce, and to execute and administer all applicable documents and agreements pursuant to such grant.
2. The City Manager is authorized to sign and/or execute any other documents necessary to fulfill the requirements and intent of the agreement with the Department of Commerce.

ADOPTED BY THE CITY COUNCIL this 20th day of September, 2022.

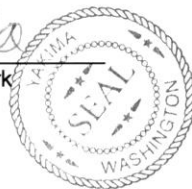


Janice Deccio, Mayor

ATTEST:



Sonya Claar Tee, City Clerk





Capital Agreement with

City of Yakima

through the

Connecting Housing to Infrastructure Program (CHIP)
using State Capital Funds

Purpose:

To support the construction of affordable housing by reimbursing the City for waived system development charges for the Fruitvale Housing Phase 2 project

Start date: July 1, 2021

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Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: 22-96720-015

Washington State Department of Commerce
 Local Government Division, Growth Management Unit
 Connecting Housing to Infrastructure Program (CHIP)

1. Contractor City of Yakima 129 North Second Street Yakima, WA 98901		2. Contractor Project Address Fruitvale Housing Project Phase 2 810 North Sixth Avenue Yakima, WA 98902	
3. Contractor Representative Joan Davenport Director of Community Development 509 576-6417 joan.davenport@yakimawa.gov		4. COMMERCE Representative Eric Guida Senior Planner (360)725-3044 eric.guida@commerce.wa.gov	
5. Contract Amount \$299,771	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date July 1, 2021	8. End Date June 30, 2023
9. Federal Funds (as applicable) NA	10. Federal Agency NA	CFDA Number: NA	
10. Tax ID #	11. SWV # 007122-02	12. UBI # 395-005-272	13. DUNS # 07-8212651
14. Contract Purpose To support the construction of affordable housing by reimbursing the City for waived system development charges for the Fruitvale Housing Phase 2 project.			
COMMERCE, defined as the Department of Commerce and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, and Attachment "B" – Budget.			
FOR CONTRACTOR DocuSigned by: <u>Robert Harrison</u> Bob Harrison, City Manager 9/26/2022 3:18 PM PDT Date CITY CONTRACT NO: <u>2022-1168</u> RESOLUTION NO: <u>R-2022-136</u>		FOR COMMERCE DocuSigned by: <u>Mark Barkley</u> Mark Barkley, Assistant Director, Local Government Division 9/26/2022 8:32 PM PDT Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Last revision 10/13/2020

**SPECIAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

1. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed **two-hundred-ninety-nine thousand seven-hundred-seventy-one dollars (\$299,771)** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

3. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the **Contract Number 22-96720-015**. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Eligible expenses are those incurred beginning on May 18, 2021, through June 30, 2023.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Grantees must invoice for all expenses by June 17, 2023. The parties understand and agree that any state funds not expended by June 30, 2023, will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, 2023, regardless of the contract start and end date.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

4. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

5. HISTORICAL OR CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor's Executive Order 05-05, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend the Scope of Work the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

7. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

**GENERAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys' fees and costs.

**GENERAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

9. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE,
- ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE, and
- iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Connecting Housing to Infrastructure Program (CHIP) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If

**GENERAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

it is determined by COMMERCE that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

13. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

14. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

**GENERAL TERMS AND CONDITIONS
CAPITAL
STATE FUNDS**

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

16. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

17. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County

18. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

20. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

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21. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

22. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

24. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

26. PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

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27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

28. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

31. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

32. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

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34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

36. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

37. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE. COMMERCE approves Yakima Housing Authority, the developer, as a subcontractor under this Contract through the application and award process.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

40. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need

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to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law

41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

42. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated,
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

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- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

43. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

44. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Reimburse \$299,771 in waived system development charges for Phase 2 of the Fruitvale Housing Project, a new affordable housing project that serves and benefits low-income households, according to the Budget, Attachment B, below.

Source of Funds

Based on the criteria within the state capital budget, SSB 1080 Sec 1074, (Laws of 2021) and criteria developed by Commerce to ensure the terms of the appropriation are met, all grants must meet the following criteria:

- Applicant must be a city, county or public utility district, applying in coordination with the developer of a multi-unit affordable housing project, located within a jurisdiction that imposed a sales and use tax under RCW 82.14.530(1)(a)(ii), 82.14.530(1)(b)(i)(B), 82.14.540, or 84.52.105.
- For system development charge waiver reimbursement, jurisdictions must have an adopted fee waiver program, and documentation that the fees have been waived for the affordable housing units by each provider for water, sewer, and stormwater, in accordance with the budget.
- The utility project must serve new multi-unit affordable¹ housing projects that serve and benefit low-income households.² If the project is a mixed-income project, the affordable portion of the development must be at least 25%. CHIP funds can pay for the system development charges for the affordable units.
- The affordable housing project should be part of a program that will monitor affordability for a minimum of 25 years, such as the Housing Trust Fund, low-income housing tax credits, housing authority, or a city monitoring process. A covenant and/or note and deed of trust may be required as part of securitization to ensure affordability.

¹ "Affordable housing" has the same meaning as in RCW 43.185A.010, and means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. In the context of homeownership, the definition from the Housing Trust Fund Handbook applies (Section 701.7): "affordability occurs when a household's monthly housing costs are generally no more than 38 percent of monthly household income and total debt is no more than 45 percent of monthly household income. Housing costs include mortgage principal, interest, property taxes, homeowner insurance, homeowner association fees, and land lease fees, as applicable. Total debt includes other debt and utilities."

² "Low-income household" has the same definition as in RCW 43.185.010(6), and means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located.

Attachment B

Budget

Waived System Development Charges for Water	City of Yakima	\$178,385
Waived System Development Charges for Sewer	City of Yakima	\$121,386
Waived System Development Charges for Stormwater	NA	\$ 0
Total Waived System Development Charges		\$299,771

EXHIBIT D- CIVIL RIGHTS CERTIFICATION

CIVIL RIGHTS CERTIFICATION FORM

The funds provided to the grantee named below (hereinafter referred to as the "Grantee") are available under section 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act.

Grantee understands and acknowledges that:

As a condition of receipt of federal financial assistance from the Department of the Treasury, with monies distributed through the City of Yakima, Grantee provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to Grantee, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of Grantee's program(s) and activity(ies), so long as any portion of Grantee's program(s) or activity(ies) is federally assisted in the manner prescribed above

Grantee certifies the following:

1. Grantee ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Grantee acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Grantee understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Grantee shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Grantee understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in Grantee's programs, services, and activities.
3. Grantee agrees to consider the need for language services for LEP persons when Grantee develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Grantee acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Grantee and its successors, transferees, and assignees for the period in which such assistance is provided.
5. Grantee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Grantees of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
6. Grantee understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates Grantee,

or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property.

7. Grantee shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Grantee shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Grantee shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Grantee also must inform the Department of the Treasury if Contractor has received no complaints under Title VI.
9. Grantee must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Contractor and the administrative agency that made the finding. If Grantee settles a case or matter alleging such discrimination, Grantee must provide documentation of the settlement. If Grantee has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

I hereby certify that I have read and understood the obligations described above, that Grantee is in compliance with the above-described nondiscrimination requirements, and by my signature on this document, acknowledge my understanding that any intentional or negligent misrepresentation or falsification of any information submitted in conjunction with this document could subject me to punishment under federal, civil liability and/or in criminal penalties, including but not limited to fine or imprisonment or both under Title 18, United States Code, Sec. 1001, et seq. and punishment under federal law.

Lowel Krueger
Printed Name

Signature

Executive Director
Title

Date

EXHIBIT E- LOBBYING CERTIFICATION

LOBBYING CERTIFICATION FORM

The undersigned certifies, to the best of the undersigned’s knowledge and belief, that:

(1) 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 or employee of an 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.

(2) 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, as attached.

(3) The undersigned shall require that the language of this certification 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 and not more than \$100,000 for each such failure.

I hereby certify that I have read the above certification, and that the information and my statements provided herein by me are true and correct to the best of my knowledge, and by my signature on this document, acknowledge my understanding that any intentional or negligent misrepresentation or falsification of any of the information in this document could subject me to punishment under federal and/or civil liability and/or in criminal penalties, including but not limited to fine or imprisonment or both under Title 18, United States Code, Sec. 1001, et seq. and punishment under federal law.

Lowel Krueger
Printed Name

Signature

Executive Director
Title

Date

EXHIBIT F COST CERTIFICATION

COST CERTIFICATION

I certify that:

1. I have authority and approval from the governing body on behalf of The Housing Authority of the City of Yakima (“Grantee”) to accept proceeds from the City of Yakima (the “City”) per the Agreement by and between the City and Grantee from the City’s allocation of the **Washington State Department of Commerce – State Building Construction Account** eligible expenditures included on the corresponding invoice voucher for report period March 3, 2021 through December 31, 2024.
2. I understand that as additional federal guidance becomes available, an amendment to the Contract between the City and Grantee may become necessary and agree to execute necessary amendments.
3. I understand the City will rely on this certification as a material representation in processing reimbursements or payment requests.
4. I understand the Grantee receiving funds pursuant to this certification shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with §200.333 Retention requirements for records of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Such documentation shall be produced to the City upon request and may be subject to audit by the State Auditor.
5. I understand any funds provided pursuant to this certification cannot be used for expenditures for which Grantee has received any other funding whether state, federal or private in nature, for that same expense.

I hereby certify that I have read the above certification, and that the information and my statements provided herein by me are true and correct to the best of my knowledge, and by my signature on this document, acknowledge my understanding that any intentional or negligent misrepresentation or falsification of any of the information in this document could subject me to punishment under federal and/or civil liability and/or in criminal penalties, including but not limited to fine or imprisonment or both under Title 18, United States Code, Sec. 1001, et seq. and punishment under federal law.

Lowel Krueger
Printed Name

Signature

Executive Director
Title

Date