

ATTACHMENT B – SAMPLE CONTRACT

COVID RECOVERY PROGRAM – CITY OF YAKIMA

Pursuant to 2 CFR 200.332(a)(1) Federal Award Identification

(i) Agency Name (must match the name associated with its unique entity identifier)		(ii) Unique Entity Identifier (i.e., DUNS)	City of Yakima Number for This Agreement
(iii) Federal Award Identification Number (FAIN) CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS, CFDA 21.027	(iv) Federal Award Date	(v) Federal Period of Performance Start and End Date March 3, 2021 – December 31, 2026	(vi) Federal Budget Period Start and End Date
(vii) Amount of Federal Funds Obligated to the agency by this action:	(viii) Total Amount of Federal Funds Obligated to the agency	(ix) Total Amount of the Federal Award Committed to the agency	
(x) Federal Award Project Description: CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS– CITY OF YAKIMA			
(xi) Federal Awarding Agency : DEPARTMENT OF THE TREASURY	Pass-Through Entity: CITY OF YAKIMA	Awarding Official Name and Contact Information: Jennifer Ferrer-Santa Ines Director of Finance & Budget Jennifer.ferrer@yakimawa.gov	
(xii) Assistance Listing CFDA Number and Name (the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement) 21.027 - CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS			(xiii) Identification of Whether the Award is R&D No.
(xiv) Indirect Cost Rate for the Federal Award N/A	Award Payment Method (lump sum payment or reimbursement) REIMBURSEMENT		Is the Agency a Subrecipient for the Purposes of This Agreement? *** YES

***The term “Contractor” shall refer to a contractor or subrecipient, as determined in the City’s sole discretion and referenced in the FAIN table cover page.

PASS-THRU ENTITY NAME	City of Yakima	RECIPIENT	
Name:		Name:	
Title:		Title:	
Signature:		Signature:	
Date:		Date:	

If you require accommodation to access this form, alternate formats are available upon request

AGREEMENT

Contractor _____
Project Title _____
Contract Amount \$ _____
Contract Period From: _____ To December 31, 2024
DUNS No. (if applicable) _____ SAM No. (if applicable) _____

THIS AGREEMENT No. _____ ("Contract") is entered into by the CITY OF YAKIMA (the "City"), and _____ (the "Contractor") whose address is _____.

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
Coronavirus State and Local Fiscal Recovery Funds(SLFRF)	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, specifically the construction of a domestic violence shelter by the Contractor,

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 _____ proposed in the Scope of Work.*
- 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 -	Yakima City Employee who interfaces with team members, business owners, contractors, project staff and others to assist in the administration of the City's contracts.
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. The Project Manager may also be the Contract Specialist.
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 Finance Director.
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 as if fully set forth herein:

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
Written Justification for Use of ARPA Funds	G
Recipient Agreement: US Treasury and City of Yakima	H

- A. Scope of Eligible Expenditures.** *Funds shall only be used to 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 on _____, and shall terminate on December 31, 2024, 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 via reimbursement 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 for reimbursement 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 30 days after a complete and accurate invoice is received.

C. Final Invoice:

The Contractor shall submit its final invoice for reimbursement 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, 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 City 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 City 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 	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

	statements			
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.

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, federal, state or local law. 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.***
- v. Any violation of this contract or failure to complete the scope of work will result in the requirement of the Contractor to repay the City the funds granted herein.***

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 County 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 all liabilities, losses, damages, and expenses related to all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, prevailing wages, or taxes, and/or (2) 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; and/or (3) all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this 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, except for claims caused by the City's sole negligence. 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.

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 December 31, 2026 if the Contract term is fully extended), 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 county 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 supported, in whole or in part, by federal award number CFDA 21.027 Coronavirus State and Local Fiscal Recovery Funds 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 County 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 County 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, representatives, 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. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

F. 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. 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 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; and
- 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 Contract 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 prior written consent 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 City 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
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 elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers, from any and all costs, claims, judgments, and/or

awards of damages arising out of, or in any way resulting from any 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 or activities that will be undertaken by Contractor at the domestic violence shelter, 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
Robert Harrison City Manager 129 North 2 nd Street Yakima, WA 98901	

bob.harrison@yakimawa.gov	
Copy to: Cally Price 129 North 2 nd Street Yakima, WA 98901 Cally.price@yakimawa.gov	

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.

- D. 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.

E. 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.

F. 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.

G. 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 the City. All invoices shall be sent to the City of Yakima, c/o the Finance Department. All invoices shall contain the following information:

- A. Invoice date
- B. Purchase order number (if provided by the City)
- C. Ship to address/location
- D. Remit address
- E. Item number(s)

- F. Description of supplies or services
- G. Quantities
- H. Unit prices
- I. Subtotal and totals amount
- J. Discount terms or amount, if applicable
- K. Applicable sales tax with correct tax rate based on destination

For each item invoiced, provide the complete description of the products, services, phases or milestones accepted, 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>(i) Subrecipient agency name (which must match the name associated with its unique entity identifier);</i>	
<i>(ii) Subrecipient agency's unique entity identifier (i.e. DUNS);</i>	

(iii) Federal Award Identification Number (FAIN) or Federal;	CFDA 21.027
(iv) Federal Award Date;	March 3, 2021 through December 31, 2024
(v) Subrecipient agency Period of Performance Start and End Date;	March 3, 2021 through December 31, 2024
(vi) Amount of Federal Funds Obligated to the subrecipient agency by this action;	
(vii) Total Amount of Federal Funds Obligated to the subrecipient agency;	
(viii) Total Amount of the Federal Award committed to the subrecipient;	
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS – CITY OF YAKIMA
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official	Federal Awarding Agency: DEPARTMENT OF THE TREASURY Pass-Through Entity: CITY OF YAKIMA Jennifer Ferrer-Santa Ines Finance Director Jennifer.ferrer@yakimawa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	CFDA 21.027 Coronavirus State and Local Fiscal Recovery Funds
(xii) Identification of whether the award is R&D; and	No
(xiii) Indirect cost rate for the Federal Award	N/A
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.***

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

CITY OF YAKIMA

Robert Harrison, City Manager

Date

Date

EXHIBIT A- SCOPE OF WORK

EXHIBIT B PRICE ATTACHMENT

EXHIBIT C- CONTRACTOR'S PROPOSAL

EXHIBIT D- CIVIL RIGHTS CERTIFICATION

EXHIBIT E- LOBBYING CERTIFICATION

EXHIBIT F COST CERTIFICATION

EXHIBIT G Written Justification for Use of Funds

EXHIBIT H Recipient Agreement: US Treasury and City of Yakima