

RESOLUTION NO. 2016-29

A RESOLUTION OF THE CITY OF WAPATO, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT WITH THE YAKIMA VALLEY COUNCIL OF GOVERNMENTS WITH RESPECT TO THE CITY OF WAPATO'S GROWTH MANAGEMENT ACT UPDATE PROJECT

WHEREAS, the City of Wapato has applied for and received a Planning Only Grant, documented by Contract No. 15-62210-040, through the Washington State Department of Commerce's Community Development Block Grant (CDBG) program; and

WHEREAS, the Planning Only Grant was awarded to the City of Wapato for the purpose of complying with Washington's Growth Management Act (GMA), Chapter 36.70A RCW. The Planning Only Grant contract contemplates that the City of Wapato will enter into a subrecipient agreement with an agency that will aid the City of Wapato in completing its GMA periodic update project; and

WHEREAS, the City of Wapato has determined that the Yakima Valley Council of Governments is willing and able to provide the necessary services to complete the project; and

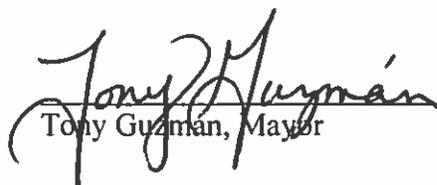
WHEREAS, the Yakima Valley Council of Governments has agreed to undertake certain aspects of the City's GMA periodic update to accomplish the City of Wapato's objectives pursuant to the Planning Only Grant contract, on the terms and conditions set forth in a Subrecipient Agreement, a true copy of which is attached hereto as **Exhibit "A,"** and

WHEREAS, the City Council for the City of Wapato finds that it is in the best interests of the residents of the City to enter into the Subrecipient Agreement with the Yakima Valley Council of Governments.

Now, therefore, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAPATO, WASHINGTON, AS FOLLOWS:**

1. The City Council authorizes the Mayor to sign the Subrecipient Agreement with the Yakima Valley Council of Governments, a copy of which is attached hereto for reference as Exhibit "A".
2. That this resolution shall be in full force and effect upon passage and signature.

ADOPTED BY THE CITY COUNCIL this 18 day of July, 2016.



Tony Guzman, Mayor

ATTEST:

S. Pearson

Susan P Pearson, Clerk-Treasurere

Approved as to form:

K. Holgate

Kellen Holgate, City Attorney

1st Touch Date: 7/18/16

2nd Touch Date: _____

SUBRECIPIENT AGREEMENT

This Agreement is entered into by City of Wapato ("Local Government") and the Yakima Valley Conference of Governments ("Subrecipient") with respect to the Local Government's Growth Management Act Update Project ("Project").

RECITALS

A. The Washington State Department of Commerce (Commerce) is authorized by the Federal Department of Housing and Urban Development (HUD) to administer funds for selected units of local government for the purpose of carrying out projects under the Washington State Community Development Block Grant (CDBG) Program. CDBG programs are undertaken and administered in accordance with applicable local, state and federal laws, regulations and policies; and

B. Local Government has applied for and received a Planning Only Grant Contract through the CDBG Program for the purpose of completing its Growth Management Act (GMA) Periodic Update ("Project"). The award is referenced as Contract No. 15-62210-040 (the "Grant Contract"), to fund the Project with Federal Award Identification Number B-15-DC-53-001; and

C. Local Government has requested that Subrecipient undertake certain aspects of the Project as more particularly set forth herein and Subrecipient is prepared to provide assistance and undertake such work.

D. Local Government agrees to engage the Subrecipient to accomplish the Scope of Work and the objectives of the local CDBG project, on the terms and conditions set forth herein;

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE.** It is the purpose and intent of this Agreement to designate and assign to Subrecipient responsibilities as more particularly set forth herein and in the Grant Contract as approved and funded by Commerce. Under this Agreement, Local Government is still responsible for the overall administration and monitoring of the use of the CDBG funds in accordance with program requirements. Local Government and Subrecipient shall work cooperatively in meeting requirements and work contemplated by the Grant Contract.

2. **SCOPE OF SERVICES.**

A. *Local Government Responsibilities.* The Local Government is responsible for administration of the CDBG contract, and ensuring CDBG funds are used in accordance with all program requirements and the Grant Contract. The Local Government shall provide such assistance and guidance to the Subrecipient as may be required to accomplish the objectives tasks and Project outcomes contemplated by the Grant Contract and set forth in this Agreement.

Local Government shall be responsible for completing the following tasks and objectives of the Project:

Principal Tasks

- Review and comment on draft project materials in a timely fashion
- Schedule timely meetings for review of draft project materials

- Coordinate with Subrecipient in a timely fashion with respect to information acquisition, study structures, review processes and other contract components
- Provide city-specific information as reasonable or necessary for project completion

B. *Subrecipient Responsibilities.* Subrecipient shall be responsible for satisfactory and proper completion of Project tasks as more particularly set forth in *Attachment #1 Budget and Scope of Work*. Project work is intended to result in compliance with GMA requirement for periodic updates with major components including, but not limited to 1) update to Local Government's comprehensive plan review and update, 2) development regulation review and update, and 3) critical area review and update. Subrecipient will periodically meet with the Local Government to review the status of these tasks.

3. TIME OF PERFORMANCE. The effective date of this Agreement will be the date the parties sign and complete execution of this Agreement. This Agreement shall be effective for the time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets arising from the Grant Contracts.
4. AGREEMENT REPRESENTATIVES. Each party to this Agreement shall have a representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

A. Subrecipient:

Name of Representative: Shawn Conrad
Mailing Address: 311 N. 4th Street Suite 204
City, State and Zip Code: Yakima, WA 98901
Telephone Number: (509) 574-1550
Fax: (509) 574-1551
E-mail Address: shawn.conrad@yvcog.org

B. Local Government :

Name of Representative: Tony Guzmán
Title: Mayor
Mailing Address: 205 E. 3rd Street
City, State and Zip Code: Wapato, WA 98951
Telephone Number: (509) 877-2334
Fax Number: (509) 877-3979
E-mail Address: mayor@wapato-city.org

5. BUDGET. An estimated budget for Project tasks is set forth in *Attachment #1, Budget and Scope of Work*. Local Government will pass through to the Subrecipient no more than \$24,000 in CDBG funds for eligible incurred costs and expenses for the Project according to the attached budget.

Indirect Cost Rate if the Subrecipient chooses to charge an indirect under this grant, the Subrecipient shall provide their indirect cost rate that has been negotiated between their

entity and the Federal Government. If no such rate exists, a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

“Modified Total Direct Costs (MTDC)” shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each sub-award (regardless of the period of performance of the sub-awards under the award). MTDC excludes equipment, capital expenditures, and rental costs.

Any amendments to this Agreement’s Budget must be approved in writing by the Local Government and the Subrecipient.

6. PAYMENT. The Local Government shall reimburse the Subrecipient in accordance with the payment procedures outlined in the Grant Contract. Special Terms and Conditions – Community Development Block Grant Program”, Section 4.

Reimbursement under this agreement will be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement will not be submitted in excess of actual cash requirements necessary to carry out the purposes of the Agreement.

It is understood that this Agreement is funded in whole or in part with CDBG funds through the Washington State CDBG Program as administered by Commerce and is subject to applicable state and federal regulations.

7. PERFORMANCE MONITORING. Local Government will monitor and track Subrecipient performance, review payment requests for applicable costs, manage the timely pass-through of CDBG funds, oversee compliance with CDBG requirements, and ensure compliance with recordkeeping and audit requirements.

Local Government shall identify in writing any matters of substandard performance. If corrective action is not taken by the Subrecipient within a reasonable period of time Local Government may initiate contract suspension or termination procedures.

8. GENERAL CONDITIONS

- A. *General Compliance.* Subrecipient shall comply with applicable laws and regulations including the requirements of Title 24 of the Code of Federal Regulations, Part 570 (HUD regulations concerning CDBG.)
- B. *CDBG National Objective.* Subrecipient certifies the activities carried out under this Agreement meet a CDBG Program National Objective defined in 24 CFR 570.208.
- C. *Independent Contractor.* Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Subrecipient will at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. Local Government shall not be responsible for payment of Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, incurred by Subrecipient with respect to services provided hereunder.
- D. *Hold Harmless.* Subrecipient will hold harmless, defend and indemnify the Local Government from any and all claims, actions, suits, charges and judgments

whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

- E. *Funding Source Recognition.* The Subrecipient will insure recognition of the roles of Commerce, the WA State CDBG program, and the Local Government in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement will be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
- F. *Amendments.* The Local Government or Subrecipient may amend this Agreement at any time provided that such amendments are executed in writing, signed by a duly authorized representative of each organization, and approved by the Local Government's governing body.
- G. *Suspension or Termination.* Local Government may suspend or terminate this Agreement in accordance with 2 CFR 200.338 and 200.339 if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:
 - 1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statues, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
 - 2. Failure to fulfill in a timely and proper manner its obligations under this Agreement.
 - 3. Improper use of funds provided under this Agreement; or
 - 4. Submission by the Subrecipient to the Local Government of reports that are incorrect or incomplete in any material respect.

This Agreement may also be terminated for convenience in accordance with applicable law.

9. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Subrecipient shall comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Subrecipient will administer its program in conformance with 2 CFR 200. These principles will be applied for all costs incurred whether charged on a direct or indirect basis.

3. Duplication of Costs

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

B. Documentation and Record Keeping.

1. *Records to Be Maintained.*

Subrecipient shall maintain all records required by or specified in 24 CFR 570.506 and those records described in the CDBG Management Handbook. Such records will include but not be limited to:

- a. Records providing a full description of each activity assisted (or being assisted) with CDBG funds;
- b. Records demonstrating that each activity undertaken meets one of the criteria set forth in 24 CFR 570.208 as it relates to the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the citizen participation requirements prescribed in 24 CFR Part 91, Subpart B or in 24 CFR Part 91, Subpart C;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR 200.333;
- g. Labor standards records required to document compliance with the Davis Bacon Act, the provisions of the Contract Work Hours and Safety Standards Act, and all other applicable Federal, State and Local laws and regulations applicable to CDBG-funded construction projects; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. *Access to Records and Retention.*

Local Government, Commerce, and other authorized representatives of the state and federal governments shall have access to any books, documents, papers and records of the Subrecipient that are directly pertinent to the contract for the purposes of making audit, examination, excerpts and transcriptions.

All such records and all other records pertinent to this agreement and work undertaken under this Agreement will be retained by the Subrecipient for a period of six years after final audit of the Local Government's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Local Government will request a longer period of record retention.

3. *Audits and Inspections.*

All Subrecipient records with respect to any matters covered by this Agreement will be made available to the Local Government, Commerce, and duly authorized officials of the state and federal government, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to

comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

Subrecipient that expends \$750,000 or more in a fiscal year in federal funds from all sources hereby agrees to have an annual agency audit conducted in accordance with current Local Government policy concerning Subrecipient audits and 2 CRF 200.501. The Catalog of Federal Domestic Assistance (CFDA) number is 14.228.

C. Reporting.

Subrecipient shall provide in a timely manner such reports as may be required under the CDBG Contract or applicable law.

10. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

Title VI of the Civil Rights Act of 1964:

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

Section 109 of the Housing and Community Development Act of 1974:

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

Age Discrimination Act of 1975, as Amended

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

Section 504 of the Rehabilitation Act of 1973, as Amended

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

Public Law 101-336, Americans with Disabilities Act of 1990

Subject to the provisions of this title, no qualified individual with a disability will, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

B. Section 3 of the Housing and Community Development Act of 1968

Compliance in the Provision of Training, Employment, and Business Opportunities:

1. The work to be performed under this agreement is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to

the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations set forth in 24 CFR 135, and all applicable rules and orders of HUD and Commerce issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.
3. The Subrecipient will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Subrecipient will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135. The Subrecipient will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of HUD and Commerce issued hereunder prior to the execution of the contract, will be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements will subject the applicant, or recipient, its consultants and subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

C. Conduct

1. Assignability

Subrecipient will not assign or transfer any interest in this Agreement without the prior written consent of the Local Government thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Local Government under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer will be furnished promptly to the Local Government and Commerce.

2. Conflict of Interest

No member of the Local Government's governing body and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the project, will have any personal financial interest, direct or indirect, in this agreement; and the Subrecipient will take appropriate steps to assure compliance.

Subrecipient shall to abide by the provisions of 24 CFR 200.318 and 570.611, which includes maintaining a written code or standards of conduct that will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

Subrecipient covenants that its employees have no interest and will not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. Subrecipient further covenants that in the performance of this Agreement, no person having such interest will be employed.

3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- a. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor will attach an explanation to this contract.
- c. The contractor further agrees by signing this contract that it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

D. Copyright

If this Agreement results in any copyrightable material or inventions, the Local Government and/or Commerce reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

E. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

11. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement will not be affected thereby and all other parts of this Agreement will nevertheless be in full force and effect.

12. PERFORMANCE WAIVER

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

13. ENTIRE AGREEMENT

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

The attachments to this Agreement are identified as follows: Attachment #1, Budget and Scope of Work.

IN WITNESS WHEREOF, the Local Government and the Subrecipient have executed this agreement as of the date and year last written below.

City of Wapato

Yakima Valley Conference of Governments

By: Tony Guzmán
Tony Guzmán, Mayor

By: _____

Date: 7/18/16

Title: _____
Date: _____

ATTEST:

By: Gloria Acosta
Gloria Acosta, Deputy Clerk-Treasurer

By: _____

Approved As To Form:

By: _____
Kellen J. Holgate, City Attorney

By: _____

