



Seattle
**Office of Planning &
Community Development**

Bruce Harrell, Mayor | Rico Quirindongo, Acting Director

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Contract Number: PC022-YHW02
Expiration Date: **August 31, 2036**
Program Name: Equitable Development Initiative & Strategic Investment Fund

AGREEMENT FOR SERVICES
between
THE OFFICE OF PLANNING
AND COMMUNITY
DEVELOPMENT
and
INDIGENOUS CREATIVES
COLLECTIVE

CONCERNING FUNDING FOR
THE ACQUISITION OF LAND
WITHIN SEATTLE CITY
LIMITS AND SERVICES TO
THE CITY

This Agreement is made as of 12/19/2022, 2022 (“**Effective Date**”) between the **City of Seattle** (the “**City**”), a **Washington Municipal Corporation**, acting by and through its **Office of Planning and Community Development** (the “**Office**”) and **Indigenous Creatives Collective, Washington nonprofit corporation** (“**yəhaw**”), to carry out activities associated with the Equitable Development Initiative and the Strategic Investment Fund (“**EDI**” & “**SIF**”).

ARTICLE I: ACTIVITIES

Section 100: Project Description

Project Overview: This Agreement is intended to support **yəhaw**’s efforts in acquiring and developing the Property (defined in Section 101) to provide cultural, arts, and education programming, social services, economic development, and other programs and services consistent with the City of Seattle’s Equitable Development Initiative goals and for any ancillary uses in support of the foregoing uses (“**Project**”). The Property is undeveloped land, which **yəhaw** intends to use both as a preserve of natural space and to construct a building and other improvements (the “**Facility**”). The Facility will include small offices and other spaces and will allow for gatherings of artists and Seattle’s Urban Indigenous communities and other residents benefiting from **yəhaw**’s provision of Services. The Facility will complement the undeveloped portion of the Property, which will also be used for the provision of Services. The City acknowledges that **yəhaw** does not have immediately available funds to construct the Facility. From and after the

Commencement of Services, yəhaw will provide the Services described in the Scope of Work attached hereto as Exhibit A on the undeveloped Property while money is raised to build the Facility.

yəhaw shall perform its obligations under this Agreement and receive **no more than \$1,995,000 from the City** (“Maximum City Payment”) **to be used to support the acquisition of land within the City limits.** yəhaw may deploy City payments under this Agreement for expenses related to: predevelopment and feasibility studies, the Property (defined in Section 101) purchase, and capacity building necessary to pursue and complete the Property purchase with intent to develop at least one (1) non - residential building at the Property. At the Close of Sale (defined in Section 101) and in partial consideration for the City payments under this Agreement, yəhaw will provide City property rights in the Property in the form of the Restrictive Covenant Agreement (defined below) and Deed of Trust (defined below), deliver Services provided in the Scope of Work (attached as Exhibit A) and carry out other responsibilities set out in this Agreement. If the project scope changes to include a residential component to the Project, or if additional EDI funds are provided, this Agreement will be amended and restated to ensure compatibility with the additional funding sources.

In exchange for City funds, yəhaw commits to conduct the Services for the Seattle area during a period of 160 months starting on the Commencement of Services (defined below) and will execute a Restrictive Covenant Agreement reserving the Property for these public uses during the Term (defined below) starting on the Effective Date as set out in Section 104 and the Scope of Work (attached as Exhibit A).

Section 101: Property Description and Project Location

Property Description: The Property subject to this Agreement (the “**Property**”) and in connection with which yəhaw will perform its duties under this Agreement is the property located in the Seattle City Limits with the following legal description:

Unit Lots A through I, inclusive, of Unit Lot Subdivision No. 3038570-LU recorded February 24, 2022 under recording no. 20220224900002, records of King County, Washington.

yəhaw will purchase the Property through a Purchase and Sale Agreement (“**PSA**”) consistent with the terms and conditions of this Agreement. yəhaw will acquire ownership of the Property, and perform other duties under this Agreement, at the close of the transaction contemplated by the PSA (the “**Close of Sale**”).

Section 102: City Covenant and Security Interest

- A. In partial consideration for the City’s payments under this Agreement, yəhaw will deliver to City a covenant restricting the use of the Property to certain public benefit purposes as described therein (the “**Restrictive Covenant Agreement**”, attached as Exhibit B) for a period of one hundred sixty (160) months.
- B. yəhaw’s obligation to deliver Services under this Agreement will be enforced by security against the Property in the form of a deed of trust securing specific performance of yəhaw’s obligations to pay liquidated damages set out in Section 414 of this Agreement (the “**Deed of Trust**”, attached as Exhibit C). yəhaw shall execute the Restrictive Covenant Agreement and Deed of Trust and record both against the Property at the close of yəhaw’s acquisition of the Property. City shall reconvey its security interest in the Property and Deed of Trust to yəhaw and release the Deed of Trust and the Restrictive Covenant Agreement on the Expiration Date

of this Agreement, provided that yəhaw has satisfied its obligations under this Agreement, the Restrictive Covenant Agreement and Deed of Trust to the reasonable satisfaction of City.

Section 103: Term of Agreement

The term (“**Term**”) of this Agreement shall be effective upon the Effective Date and expire on the last day of the one hundred sixtieth (160th) month following the Commencement of Services (“**Expiration Date**”) unless the Term is modified as set out in this Agreement. The City will make no payments after the Expiration Date or such earlier date as the Agreement terminates. yəhaw may not expend City funds under this Agreement after the end of the Term regardless of whether those funds are held by yəhaw or City.

Section 104: Public Benefits and Other Services

- A. yəhaw shall render certain services at the Property set out in the Scope of Work and consistent with the goals and values set forth in yəhaw’s Equitable Development Initiative Fund Application and Strategic Investment Fund (“**EDI Application**,” attached as Exhibit E, “**SIF Application**” attached as Exhibit F). In the event of any conflict between the terms of the Scope of Work and the EDI or SIF Applications, the Scope of Work shall control.
- B. This Agreement is intended to provide yəhaw the opportunity to acquire the Property and to conduct certain Property development work and other preparation work before providing Services (defined in Exhibit A) to the City. yəhaw shall begin providing public benefit services set out in the Scope of Work on the first day of the fifth (5th) full calendar month after the Close of Sale (“**Commencement of Services**”). If yəhaw determines it will be unable to start services by that date, yəhaw shall inform Office and may request an extension. In that event, City may in its discretion allow yəhaw to provide Services beyond the schedule set out in the Scope of Work as a means of providing City value equivalent to the City Payment with the understanding that any extension may be conditioned on an extension of the Term of this Agreement and the Deed of Trust and Restrictive Covenant. Furthermore, yəhaw may request in writing an earlier start of Commencement of Services, which the City shall grant in its discretion on confirmation that the delivery of Services has or will start by that date. Any change to the Commencement of Services date will be effective on execution of a letter agreement signed by both parties.
- C. If yəhaw does not provide all agreed Services, yəhaw will provide the equivalent value of such Services during the Term as further set out in the Scope of Work. If yəhaw requests additional time to provide Services equivalent to the funding received by yəhaw, City and yəhaw may mutually agree to extend the Term of the Agreement with the understanding that such an extension will also extend the terms of the Restrictive Covenant and Deed of Trust. yəhaw will be responsible for demonstrating that any proposed adjustment to the Services provided will not result in default on any other deed restrictions or use covenants applicable to the Property.
- D. yəhaw’s failure to provide agreed Services under the Scope of Work beyond applicable notice and cure periods or to provide equivalent value as directed by City beyond applicable notice and cure periods will be an Event of Default under this Agreement.
- E. If yəhaw determines that the Services are no longer a viable public use for the Property, yəhaw may, upon the City’s written consent, which shall not be unreasonably withheld, conditioned, or

delayed, convert the Property to another use that provides an equivalent public benefit as the Services. It shall not be deemed unreasonable for the City to withhold consent to a change of use that the City reasonably believes will not provide a public benefit substantially equivalent to the public benefit provided by the Services; however, the public benefit provided by the proposed changed use need not be identical to that provided by the Services. If such change of use is permitted by the City, the City and yəhaw shall cause an amendment to the Restrictive Covenant Agreement to be recorded or terminate the Restrictive Covenant Agreement and record a new restrictive covenant, in either case giving yəhaw credit for the time elapsed and Services provided since the recording of the original Restrictive Covenant Agreement. yəhaw will be responsible for demonstrating that any proposed adjustment to the Services provided will not result in default on any other deed restrictions or use covenants applicable to the Property.

Section 105: Project Maintenance

After the Close of Sale and for the remainder of the Term, yəhaw shall perform maintenance at the Property pursuant to the maintenance plan described as follows:

The yəhaw shall develop a plan to provide adequate staffing, funding, and hours of operation to maintain the Property in a safe and healthy manner for use by its staff/constituents and the public. yəhaw shall carry sufficient commercial general liability and property insurance as long as it operates the Property.

Additional obligations are set out in Section 302(C).

Failure to maintain the Property as set out above beyond applicable notice and cure periods will constitute an Event of Default under this Agreement and may exclude yəhaw from receiving future City funding. Failure to maintain the Property may result in the City taking any action it reasonably deems appropriate to preserve the Property and protect the public or the City's property interest in the Property.

Section 106: Contacts and Notices

Written notices, requests, grievances, reports, invoices or adjustments to the City or Office shall be made to EDI Fund Manager, Office of Planning and Community Development, P.O. Box 94788, Seattle, Washington 98104-7088 or email michael.blumson@seattle.gov unless a different contact is identified in writing by City to yəhaw ("Office Contact").

Written notices, requests, reports, grievances or adjustments for yəhaw shall be made to Executive Director, Indigenous Creatives Collective, 3815 S Othello St, Ste 100/348, Seattle, WA 98118, or email info@yehawshow.com unless a different contact person is identified in writing by yəhaw to the Office Contact.

All notices, requests, grievances, reports, invoices or adjustments to be given pursuant to this Agreement shall be in writing and shall be deemed given when emailed to the email address set out above or hand-delivered to the recipient within normal business hours or when delivered (or attempted delivery) when mailed by U.S. Postal Service or nationally recognized overnight delivery service providing a receipt for delivery to the parties hereto at the addresses set forth above, or to such other place as a party may from time to time designate in writing. If a notice is received on a Saturday, Sunday, or City-recognized legal holiday, it shall be deemed received on the next business day.

ARTICLE II: FINANCIAL CONDITIONS

Section 200: Payment

- A. In exchange for the promises and obligations undertaken by yəhaw in connection with this Agreement, the City will pay yəhaw an amount not to exceed the Maximum City Payment of \$1,995,000.
- 1) The City will make a disbursement through escrow at closing of the Property sale (“**Closing Payment**”) only for costs yəhaw incurred through and necessary to close the Property sale, including in particular, costs for yəhaw to acquire purchase rights through an assignment agreement, costs to purchase the Property through a purchase and sale agreement, costs for title insurance, and costs for due diligence performed by or on behalf of yəhaw such as a survey and environmental study.
- 2) The City may, in its discretion, pay yəhaw any portion of the Maximum City Payment remaining after disbursing the Closing Payment towards yəhaw’s actual costs related to land restoration and capital improvements, including without limitation developing the Facility.
- B. To request payment from the City, yəhaw shall submit an invoice to the Office contact on such form(s) provided by the Office. The invoice must be signed by an authorized representative of yəhaw, who shall verify that the invoice is accurate.
- C. The City shall be excused from payments if funds allocated by the Office to the Maximum City Payment cease to be available due to lack of appropriation, in which case the liquidated damages secured by the Deed of Trust shall be reduced to reflect the actual amount paid by City to yəhaw, including the full value of the Closing Payment, based on the following formula: $\$12,500 \times$ the number of months in compliance with Term of the Agreement, starting at the date of the Close of Sale. City and yəhaw shall execute and cause to be recorded at the City’s sole expense a revised Restrictive Covenant Agreement with a reduced term ending when the value of public benefits rendered equal City dollars actually paid to yəhaw pursuant to the Amortization Schedule set out in the Scope of Work. This revised Restricted Covenant Agreement shall be in a form mutually agreed to allow yəhaw to provide public benefits compatible with its financial condition and consistent with City’s partial payment of funds under this Agreement.
- D. Conditions precedent to City payment of Closing Payment: City will pay yəhaw up to the Maximum City Payment for costs City determines to be related to the Project once all of the following conditions are met:
- 1) City is satisfied after reviewing yəhaw’s organizational structure and operating facilities, Project plans, building conditions reports and surveys, and financial plans, that yəhaw is prepared to undertake and pay for the acquisition of the Property (subject to the Maximum City Payment) and any renovation required to provide the Services as set out in this Agreement and to operate the Property such that the City can be reasonably assured of a 160-month life of the site/Facility.
- 2) City has reviewed, with such approval not to be unreasonably delayed, conditioned, or denied, a finalized draft of the PSA, a finalized draft of any assignment agreement for purchase rights that will require funding through the Closing Payment, and an estimated settlement statement. It will not be unreasonable for City to deny approval of any Property transaction document that is inconsistent with the terms of Section 200(A) of this Agreement, Section 202 of this Agreement, or commercial real estate best practices.

- 3) yəhaw has provided City a copy of yəhaw's escrow instructions consistent with the terms of this Agreement that will be given to the escrow officer for the Close of Sale.
 - 4) yəhaw completes and executes both the Restrictive Covenant Agreement and Deed of Trust in the form attached hereto and approved by City that secure yəhaw's obligations to the City consistent with this Agreement.
 - 5) The Deed of Trust shall be senior to any other monetary encumbrances on the Property that are disclosed by the title commitment or are otherwise known or should be known by the City or yəhaw or any of yəhaw's officers or agents. The City shall record the Restrictive Covenant Agreement and Deed of Trust at the Close of Sale and pay as a transaction cost all recording costs associated therewith.
 - 6) yəhaw delivers to City insurance documentation meeting City requirements, described in Section 302(C).
 - 7) City is satisfied after reviewing available project plans that yəhaw is prepared to undertake and complete any projects associated with yəhaw's proposed use of the Property and expenditure of City payments. City acknowledges that yəhaw is in a pre-project planning stage and will not have finalized project plans for City review prior to the Close of Sale.
- E. Conditions precedent to City payment of subsequent payments: Funds will not be disbursed to yəhaw until all of the following conditions are met and no subsequent payment will be made if the Maximum City Payment has already been disbursed through the Closing Payment.
- 1) yəhaw provides the City with invoices aligned with an approved development budget as approved by the City.
 - 2) If yəhaw intends to use funds for tenant improvements or any other activity considered alteration, renovation, construction, and/or improvement at the Property, yəhaw will ensure that their agreements with the Contractor require prevailing wages and that the Contractor has completed an Intent to Pay Prevailing Wage and filed it with the State Department of Labor and Industries. yəhaw will be responsible for also ensuring that the contractor completes an Affidavit of Prevailing Wages before releasing final payment.
- F. If yəhaw becomes aware that any representation it has made to City, financial or otherwise, is likely to be false, yəhaw shall alert EDI within fourteen (14) days and take all remedial action required by City in its reasonable discretion.
- G. yəhaw shall provide any additional insurance required by the City to satisfy Section 302(C)(A)(5) to manage potential construction risks.
- H. yəhaw must provide City with final project accounting that shows to the City's satisfaction that no funding provided under this Agreement were spent on expenses (including without limitation, expenses associated with the purchase of property, goods and services as well as in-kind benefits provided by yəhaw) paid for by another funding source. The City may in the City's sole discretion require yəhaw to refund or redeploy to approved purposes via an amended Scope of Work any funding City determines were not spent on unique approved activities under this Agreement.

- I. At the Property Closing, City will obtain a lender's policy of title insurance that City determines to be reasonable for a transaction of this nature. The cost of such title insurance policy will be paid by the City and included in the City Payment to escrow.
- J. yəhaw's delivery of the Restrictive Covenant Agreement and provision of Services secured by the Deed of Trust will provide consideration for the City payments to yəhaw pursuant to this Agreement.

Section 201: Other Funds Raised

yəhaw shall inform the Office Contact about any funds allocated to yəhaw that it anticipates will not be expended during the Term of this Agreement and permit the City to reallocate the same; and it shall inform and promptly pay to the City any funds in its possession that may be due to the City. yəhaw shall repay to the City any sums received which yəhaw does not expend for eligible purposes.

yəhaw shall promptly inform the Office Contact if alternative funding sources (other than the Maximum City Payment) are committed to yəhaw for any activities funded by this Agreement, including funding from the City other than those provided by this Agreement. If the Director of the Office ("Director") determines that alternative funding sources from the City or otherwise are likely to be realized, Director may, at Director's sole discretion, require a refund or deployment via an amended Scope of Work any funds from the Maximum City Payment Director determines are superfluous to the Project; if the Director elects a redeployment, the parties shall cooperate in good faith to effect such redeployment.

Section 202: Reimbursement

The City shall require escrow instructions sufficient to ensure that City funds, including funds spent for predevelopment, are returned to City if the Property is not transferred to yəhaw. If the Property is not transferred to yəhaw, yəhaw shall refund to City all payments provided under this Agreement unless City and yəhaw mutually agree to alternative consideration to be provided by yəhaw. City may condition its acceptance of alternative consideration on execution by yəhaw of security instruments City determines to be reasonably sufficient to guaranty yəhaw's performance without the Property.

Section 203: yəhaw's Obligation to Disburse Funds

It is the responsibility of yəhaw to pay the services performed by employees, contractors, and vendors and to ensure that contractors are paying their subcontractors, vendors, taxes and other financial obligations with consideration of prevailing wage requirements (see <http://www.lni.wa.gov/workplacerrights/wages/minimum/>). The Office shall not be held responsible for any amounts claimed by yəhaw's employees, suppliers, staff, contractors or subcontractors which have not been approved for payment by the City.

ARTICLE III: PROJECT REQUIREMENTS

The following requirements must be completed by yəhaw on an ongoing basis after the closing of the purchase of the Property. Satisfactory performance of these requirements is required for City to release the Restrictive Covenant Agreement and the Deed of Trust and reconvey the City's security interest in the Property and Deed of Trust to yəhaw at the Expiration Date.

Section 300: Method of Payment

- A. When City determines the conditions precedent in Section 200(D) have been satisfied and upon receipt and approval of invoice, closing statement, and any update to escrow instructions, City will pay the Closing Payment into an escrow account reasonably acceptable to the City.
- B. If and when City determines the conditions precedent in Section 200(E) have been satisfied and on receipt and approval of invoice, City will pay any remaining payment, up to the Maximum City Payment directly to yəhaw.
- C. The Office reserves the right to withhold payments pending timely delivery of a properly executed invoice or other documents expressly required under this Agreement.
- D. All expenditures noted in the final closing statement for the Property purchase must be incurred by the Property closing date set in the PSA (the “Closing Date”), as may be amended, in order to be eligible for City payment.
- E. City shall use best efforts to timely review invoices from yəhaw, including consultants’ and closing invoices, and provide a response within 30 days of receipt. If City approves payment of the invoice, City shall use best efforts to provide payment within 30 days of receipt of the invoice.
- F. Invoices to City shall be submitted to the City Contact set out in Section 106.

Section 301: Required Opportunity for Access and Documentation

A. Opportunity for Access

yəhaw agrees to make available, on at least two (2) weeks prior written request from the City and subject to the mutual execution by the City and yəhaw of a commercially reasonable license or use agreement, up to five free uses of the new Property for the City of Seattle to use for an event, meeting, or workshop to further the goals of the EDI program, as further provided in the Scope of Work. Arrangements for this free City use of space will be handled through the Office Contact, with access use to further the goals of the EDI program. City access rights will be in addition to rather than substitute for Services required under the Scope of Work.

B. Closing Reporting

The City shall submit escrow instructions to the escrow closer requesting copies of all documents recorded in connection with the purchase of the Property, including the deed, Deed of Trust and Restrictive Covenant Agreement. yəhaw shall, if required by the escrow closer, consent in writing to the delivery to the City of such copies.

C. Project Oversight and Reporting

The Office will have oversight of this Project following acquisition for the term of the Restrictive Covenant Agreement to ensure agreed Services are provided and the Property uses meet the requirements under this Agreement. yəhaw shall provide an annual report to the Office, in a format acceptable to the Office, confirming the continued use of the space for the Services to be provided under this Agreement no later than December 31st each year during the Term of this

Agreement. In addition, yəhaw shall work cooperatively with the Seattle Department of Construction and Inspections (SDCI) staff to meet SDCI usage requirements.

D. Permission for Use of Project Images

yəhaw is requested to provide the Office with photo images of the Property, if available. The Office agrees that it will make use of such images for non-commercial purposes only, in connection with promoting the work of the Office and the cultural community. yəhaw will provide photo captions and the names of the photographers to ensure that appropriate credit is given if images are used. By submitting photo images, yəhaw grants the Office permission for such use and represents that he/she/it has the right to authorize the use of such images by the Office of Planning and Community Development, *including necessary parental permission for photos that may include children under the age of 18.*

Section 302: Indemnification and Risk Management/Third Party General Liability Insurance

A. Indemnification

yəhaw under this Agreement agrees to indemnify and save harmless the City, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature, including attorney fees, arising out of, in connection with, or incident to the work of this Agreement or to the use of the Property, except to the extent caused by the sole negligence or willful misconduct of the City (including its officers, agents and employees), even though some act or omission, negligent or otherwise, of the City may also be a cause of the loss or damage. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee or volunteer of yəhaw, and yəhaw expressly waives all immunity and limitation on liability under the Washington State Industrial Insurance Act (Title 51, RCW).

B. Risk Management

It shall be the responsibility of yəhaw to exercise good risk management at all times to reasonably minimize risk to those working in and visiting the Property as well as the general public.

C. Insurance

Capitalized terms used in this Section and not defined in this Agreement shall be construed in accordance with customary usage in the insurance industry as of the Effective Date of this Agreement, unless the context clearly requires otherwise.

Commencing at the Close of Sale, yəhaw shall maintain in full force and effect so long as this Agreement or the Restrictive Covenant Agreement shall be in effect at yəhaw's sole cost and expense, and yəhaw's contractors and subcontractors of all tiers shall maintain in full force and effect during the period of construction, minimum types of insurance coverages with such minimum limits of liability and meeting such general conditions as are set forth below. The specific minimum coverages, limits, general conditions, standards and forms set forth in this Section establish the requirements that shall apply to yəhaw unless the City shall, by notice in writing, approve or reasonably require different, additional or fewer coverages, limits, general conditions, standards or forms. Any City requirement for different, additional or increased coverage shall take effect no sooner than one year after notice is provided.

Consultant shall include “the City of Seattle” as an additional insured to all of the liability insurance coverage listed below; which must also be as primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording, and in any other manner further required by Contractor’s insurance coverage to provide the City of Seattle additional insured coverage.

(A) Coverages Required of yəhaw

(1) Property Insurance.

yəhaw shall maintain at all times Property insurance on all buildings, improvements and fixtures on an “All Risk” basis in an amount at least equal to the current 100% replacement cost thereof, as established no less frequently than annually, that covers:

- i. Loss from the perils of fire and other risks of direct physical loss (including earthquake if required in writing by the City and flood damage if the Property is in a flood hazard area) not less broad than provided by the insurance industry standard Causes of Loss - Special Form CP 10 30;
- ii. Loss or damage from water damage, or sprinkler systems now or hereafter installed in any building on the premises;
- iii. Loss or damage by abrupt and accidental breakdown, electrical injury and explosion of a steam boiler, steam piping or steam engine of steam boilers, pressure vessels, oil, or gasoline storage tanks; machinery, heating or air conditioning, elevator and escalator equipment or similar apparatus, in each case if the Property contains equipment of such nature.

(2) Commercial General Liability Insurance.

yəhaw shall maintain at all times CGL insurance, written on an Insurance Services Office (ISO) occurrence form CG 00 01 or equivalent, including Premises/Operations; Products/Completed Operations; Personal/Advertising Injury; Contractual Liability; and, Stop Gap/Employers Liability. The minimum limits of liability shall be not less than \$1,000,000 CSL and \$2,000,000 General and Products/Completed Operations Aggregate.

(3) Automobile Liability Insurance.

yəhaw shall maintain at all times automobile liability insurance for owned, non-owned, leased or hired vehicles, as applicable, written on a form CA 00 01 or equivalent with minimum limits of liability of \$1,000,000 CSL. Notwithstanding this requirement, City acknowledges that as of the Effective Date of this Agreement, yəhaw owns no automobiles and automobile liability insurance is not therefore required at this time.

(4) Worker’s Compensation.

yəhaw shall maintain at all times worker’s compensation insurance for Washington State as required by Title 51 RCW.

(5) Additional Construction Insurance or Bonding.

Additional commercially reasonable builder’s risk insurance if applicable and required in writing by the City. yəhaw shall provide any additional commercially reasonable insurance

or construction bonds required by the City to cover the construction on the Property if payments from the City are used for such construction.

Section 303: Permit Requirements, Award Conditions and Approvals

yəhaw shall obtain required building permits before proceeding with any tenant improvement on the Property.

Section 304: Responsibilities of yəhaw

yəhaw is responsible for the performance of the work and the long-term maintenance of the Project. yəhaw is responsible for performing all activities set out in the Scope of Work, Exhibit A.

Section 305: Nonprofit Corporation Status

yəhaw shall maintain its status as a nonprofit corporation pursuant to Chapter 24.03A RCW. yəhaw shall also pay for and maintain in a current status any license fees, assessments, permit charges, other charges necessary for performance of this Agreement. It is yəhaw's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire Term of this Agreement. Any failure by yəhaw to maintain its status as a nonprofit licensed to operate in the City of Seattle and State of Washington shall be an Event of Default under this Agreement if such failure continues for thirty (30) days after receipt of notice from the City of such failure.

ARTICLE IV: GENERAL CONDITIONS

Section 400: Involvement of Former City Employees

yəhaw agrees to promptly inform the City of any former City officer or employee who terminated City office or employment in the last twelve (12) months and who will be working on or subcontracting for any of the paid work under this Agreement upon becoming aware of the person's status as a former City officer or employee. yəhaw further agrees that no paid work under this Agreement will be done by a former City officer or employee who terminated City office or employment in the last twelve (12) months and who, in the course of official City duties, was involved in, participated in or acted on any matter related to this Agreement.

For avoidance of doubt, City acknowledges and is aware that a former City employee is an officer of yəhaw and has determined this does not itself present an ethical bar from contracting.

Section 401: Discrimination Prohibited

Affording Equal Employment Opportunity under Seattle Municipal Code Ch. 20.44, as now or hereafter amended, during the performance of this Agreement is mandatory and yəhaw agrees as follows:

yəhaw will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. yəhaw will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action 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 apprenticeship. yəhaw agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

yəhaw will, from and after the Effective Date and during the Term of this Agreement, furnish to the Director of the Seattle Office for Civil Rights (SOCR) or his/her designee upon his/her request and on such form as may be provided by the Director of SOCR therefore, a report of the affirmative action taken by yəhaw in implementing the terms of this section 401, and upon prior written notice will permit access to its records of employment, employment advertisements, application forms, other pertinent data and records by the Director of SOCR for the purpose of investigation to determine compliance with this section.

If upon investigation the Director of SOCR finds probable cause to believe that yəhaw has failed to comply with any of the terms of this section 401, the Director of SOCR and the Office shall give yəhaw an opportunity to be heard after 10 days' notice. If the Office concurs in the findings of the Director of SOCR, it may suspend the Agreement and/or withhold any funds due or to become due to yəhaw pending compliance by yəhaw with the terms of this section, if the organization has any employees.

Failure to comply with any of the terms of this section beyond applicable notice and cure periods shall be an Event of Default under this Agreement.

The provisions of this section shall be inserted into all subcontracts for work covered by this Agreement.

In the provision of services under this Agreement, yəhaw shall not discriminate against individuals because of non-membership in any yəhaw-sponsored organization.

Section 402: Discrimination because of Certain Labor Matters

No person employed to perform work covered by this Agreement shall be discharged or in any way discriminated against by yəhaw because he/she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to the employer.

Section 403: Americans with Disabilities Act

yəhaw must make a good faith effort to ensure it is in compliance with the Americans With Disabilities Act of 1990 which, in addition to existing federal, state, and city non-discrimination laws, extends the same civil rights protection to persons with disabilities which have already been granted on the basis of race, color, religion, sex, age and national origin requirements. yəhaw shall provide the following:

1. Provide advance notification of public meetings regarding the project with the statement, "accommodation for persons with disabilities upon request."
2. Hold public meetings in accessible locations.
3. Provide alternate forms of communication if requested.
4. Make programs or services provided to the public accessible.
5. Construct barrier-free physical projects.
6. Increase general awareness of and sensitivity to people with disabilities.

Section 404: Women and Minority Business Enterprise Requirements

The following section pertains to those projects which must meet the Competitive Bid Process.

A. General:

City women- and minority-owned business (“**WMBE**”) utilization requirements shall not apply to this Agreement. No minimum level of WMBE sub-consultant participation shall be required as a condition of this Agreement and no preference will be given pursuant to this Agreement to an entity for their WMBE utilization or WMBE status. Provided, however, that any affirmative action requirements set forth in any federal regulations or statutes included or referenced in the Agreement will continue to apply.

B. Non-Discrimination:

yəhaw shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with sub-consultants and suppliers, yəhaw shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Record-keeping:

yəhaw shall maintain, for at least 12 months after the Expiration Date or sooner termination of this Agreement, relevant records, and information necessary to document level of utilization of WMBEs and other businesses as sub-consultants and suppliers in the Project. yəhaw shall also maintain all written quotes, bids, estimates, or proposals submitted to yəhaw or proposer after the date of the issuance of this Agreement by all businesses seeking to participate as sub-consultants or suppliers in the Project. The City shall have the right to inspect and copy such records after prior written notice to yəhaw. So long as this Agreement does not involve federal funds yəhaw is not required to comply with record-keeping requirements set forth in any federal rules, regulations or statutes unless otherwise included or referenced in the Agreement.

D. Affirmative Efforts to Utilize WMBEs:

Notwithstanding Section 404(A) above, the City encourages the utilization of minority-owned businesses (**MBEs**) and women-owned businesses (**WBEs**) (collectively, “**WMBEs**”), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

1. Attending a pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of contracting and subcontracting opportunities.
2. Placing all qualified WMBEs attempting to do business in the City of Seattle on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.
3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.

4. Establishing delivery schedules, where the requirements of this contract permit, that encourages participation by WMBEs.
5. Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.
6. Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City, and other organizations that provide assistance in the recruitment and placement of WMBEs.

E. Violations of Mandatory Requirements:

Any violation of the mandatory requirements of Paragraphs B and C in Section 404 beyond applicable notice and cure periods shall be an Event of Default for which yəhaw may be subject to damages provided for by the Agreement and for which yəhaw may face additional liability under applicable law.

Section 405: Intentionally Omitted

Section 406: Intentionally Omitted

Section 407: Right to Review Documents Prepared for Public Use

The Office has the right to review any reports given to or prepared or assembled by yəhaw under this Agreement prior to distribution to the public and comment on it.

Section 408: Subcontracting

This Agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the consent of the other party. In the event of any approved assignment of this Agreement, the Office shall continue to hold yəhaw responsible for proper performance of obligations under this Agreement. All provisions of this Agreement shall apply to all subcontracts entered into by yəhaw. yəhaw shall inform the Office of all subcontracts, including the process used for selecting a subcontractor.

Section 409: Documentation of Costs and other Financial and Reporting Requirements

All costs paid for with funding under this Agreement shall be supported by properly executed payrolls, time records, receipts, invoices, vouchers or other official documentation for all such expenses, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible, and the Office shall have the right to audit the records of yəhaw as they relate to the Project, upon reasonable notice. yəhaw shall also:

1. Maintain an effective system of internal control over and accountability for all funding and property supplied and make sure the same is used solely for authorized purposes.
2. Keep a continuing record of all disbursement by date, check number, amount, vendor, description of items purchased and line item from which money was expended, as reflected in accounting records. A receipt, invoice marked "Paid," or payroll record must substantiate the line item notations.
3. Maintain payroll and financial records for a period of three (3) years after receipt of final payment from the City under this Agreement.

4. Permit inspection and audit of its records with respect to all matters authorized by this Agreement by representatives of the City and the State Auditor, and at any time during normal business hours and as often as necessary.
5. Repay to the Office any funding in its possession at the time of the termination of this Agreement that may be due to the City.
6. Provide the Internal Revenue Service with appropriate and timely information regarding employee and/or consultant earnings.

In the event that the State or the City shall determine that any funding was expended by yəhaw̓ for unauthorized or ineligible purposes under this Agreement or constitute disallowed costs under this Agreement and order repayment of the same, yəhaw̓ shall, within thirty (30) days after receipt of written notice therefor, remit the same to the Office.

Further, all financial records and fiscal control systems will be established and maintained in a manner to meet the approval of the City Comptroller and the State Auditor; records and reports submitted shall be satisfactory to meet the approval of the Director of the Office.

In providing services under this Agreement, yəhaw̓, at its sole cost and expense, shall comply with all applicable laws of the United States and the State of Washington; the Charter and Ordinances of The City of Seattle; and rules, regulations, orders and directives of their administrative agencies and the officers thereof.

No funds under this Agreement may be used for construction, or any other activities, constituting a “public work” as defined by Washington state law. Unless otherwise approved by the City in writing, the City funds provided under this Agreement shall be held in a restricted account solely to be used for acquisition of the Property and other permitted expenses under this Agreement.

Section 410: Future Support

The Office makes no commitment of future support and assumes no obligations for future support of the activity contracted herein except as set forth in this Agreement.

Section 411: Reservation of Rights

Neither payment by the Office nor performance by yəhaw̓ shall be construed as a waiver of either party’s right or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

Section 412: Severability

If any provisions of this Agreement other than those provided in Article IV are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the contemplated project and the Office.

Section 413: Quality of Performance

- A. yəhaw̓ shall be responsible for the quality of Services rendered under this Agreement. Its responsibilities hereunder shall not be reduced by recommendations or assistance received from the City.

- B. The Office shall judge the adequacy and efficiency of work performed, the sufficiency of records and the Services rendered using reasonable standards consistent with EDI goals and appropriate for the scope and type of Project and yəhaw's organizational capacity. If during the course of the Agreement, the City reasonably determines that the Service(s) actually rendered do not provide agreed public benefits, yəhaw will correct, modify, remodel and/or repeat the Services not adequately rendered. Failure to make the necessary corrections, modifications, remodeling, and/or repetition beyond applicable notice and cured periods shall be an Event of Default under this Agreement.
- C. All work shall be performed and Services supplied in a manner to further Project purposes and goals, and in compliance with guidelines for performance set by the US Government through the City, this Agreement, and general direction of the City.

Section 414: Default by yəhaw

- A. If yəhaw fails to perform when required any obligation hereunder or in the Restrictive Covenant Agreement, or otherwise breaches any term hereof or thereof, the City may at any time until the failure or breach is cured provide written notice to yəhaw, specifying the nature of the failure or breach, and yəhaw shall not be in default under this Agreement unless it fails to cure such failure or breach within thirty (30) days after the date of the notice, except if a failure or breach, other than as set forth below in this subsection, is curable but not susceptible to being cured within such thirty (30) days, the City will allow yəhaw an additional period of up to ninety (90) days to cure such failure or breach or such additional time as the City reasonably determines is necessary and consistent with Project goals, provided that within such thirty (30) days, yəhaw has committed in writing to cure the failure or breach and has commenced to cure such failure or breach, and that yəhaw diligently and continuously proceeds to cure such failure or breach. The extended period to cure a breach shall not apply to a breach due to the intentional acts of yəhaw, or to a breach of the same nature as one previously cured after notice during the preceding twelve (12) months. Unless yəhaw shall fully cure all failures and breaches specified in such notice within the time allowed, the same shall be an **"Event of Default."** After an Event of Default, the City may exercise any remedies provided for default in Section 102 of this Agreement, remedies for default set out in the Restrictive Covenant Agreement, and any other remedies at law or in equity. The City's rights and remedies hereunder are not exclusive, but cumulative, and the City's exercise of any right or remedy due to yəhaw's failure to perform any covenant or condition of this Agreement beyond applicable notice and cure periods shall not be deemed a waiver of, or alter, affect, or prejudice any other right or remedy that the City may have under this Agreement or by law or in equity. After an Event of Default, the City shall have the right to copy for its unlimited use, all finished or unfinished documents, data, studies, and reports concerning the Services or the Property prepared by yəhaw under this Agreement shall, at the option of the Office, become the property of the Office.
- B. Following an Event of Default, the City is entitled to all remedies available at law or in equity, including without limitation, bringing an action for injunctive relief or specific performance, it being recognized that monetary damages may not be an adequate remedy for the City. If the City elects to pursue monetary damages, the City will be entitled to liquidated damages calculated on a straight line prorated basis equal to \$1,995,000 less the product of \$12,500 x the number of months during the Term that yəhaw was in compliance with this Agreement. The City shall have the right to foreclose on the Deed of Trust to ensure payment of the liquidated damages. The fact

that the parties have specified an appropriate amount of liquidated damages is not intended as a waiver of the City's right to seek specific performance in the event of an Event of Default.

- C. The City may, at its option, set off any liquidated damages under this Section against any amount otherwise payable or distributable by the City to yəhaw, whether or not in relation to this Agreement.
- D. yəhaw's obligation to pay liquidated damages under this Section shall be secured after yəhaw acquires the Property by the Deed of Trust, but the City shall not be required to pursue any remedies under the Deed of Trust.

Section 415: Repayment

The intentional misappropriation of funding or fiscal mismanagement of funding by yəhaw shall constitute an Event of Default and City may determine intentional acts are not susceptible to cure. In the event that the City terminates this agreement due to misappropriation of funding or fiscal mismanagement of funding, yəhaw shall return to the City all funding, which at the time of termination remain in its possession, and, shall pay to the City such funds as the City determines to be due to the City on account of the misappropriation or fiscal mismanagement or due to failure to deliver all public benefits set out in the Scope of Work.

Section 416: Changes

Either party may request changes in the Scope of Work, performance of Services, or reporting standards to be performed or provided under this Agreement. Such changes, including any increase or decrease in the amount awarded to the Project and extensions of the Term of this Agreement, which are mutually agreed upon by and between yəhaw and the Office, each in their sole discretion, shall be incorporated in written amendments to this Agreement.

Section 417: Exhibits Incorporated; Integrated Document

This Agreement incorporates all attached Exhibits, particularly, Exhibit A (Scope of Work), Exhibit B (Restrictive Covenant), Exhibit C (Deed of Trust), and Exhibit D (EDI & SIF Applications). This Agreement embodies the complete agreement, terms and conditions between the Office and yəhaw. No verbal agreements or conversation with any officer, agent or employee of the Office prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon either party.

Section 418: Governing Law

The rights, duties, liabilities and obligations of the parties under this Agreement shall be construed and governed by and under the laws of the State of Washington without regard to its principles of conflicts of laws. It is the intent of the parties that, to the fullest extent allowable by law, the laws of the State of Washington shall apply to the transaction of which this Agreement is a part. The parties, each for itself and its successors and assigns, consents to the jurisdiction of the courts in the State of Washington and agree that the venue of any suit, cause of action, or other legal proceedings brought in connection with this Agreement shall be in King County, Washington.

IN WITNESS WHEREOF, the two parties hereto have affixed their signatures below as of the Effective Date:





INDIGENOUS CREATIVES COLLECTIVE, A WASHINGTON NONPROFIT CORPORATION	CITY OF SEATTLE, A WASHINGTON MUNICIPAL CORPORATION ACTING BY AND THROUGH ITS OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT
<p> <small>Asia Tail (Dec 16, 2022 19:51 PST)</small> Asia Tail, Co-Executive Director Date 12/16/2022</p> <p> <small>Satpreet Kahlon (Dec 16, 2022 17:56 PST)</small> Satpreet Kahlon, Co-President Date 12/16/2022</p> <p> Kimberly Deriana, Co-President Date 12/19/2022</p> <p>Indigenous Creatives Collective 3815 S Othello St, Ste 100/348 Seattle, WA 98118</p>	<p> <small>Rico Quirindongo (Dec 19, 2022 14:04 PST)</small> Date 12/19/2022 Rico Quirindongo, Acting Director Office of Planning and Community Development 600 4th Ave, City Hall Floor 5 P.O. Box 94788 Seattle, WA 98124 – 7088</p>

EXHIBIT A: SCOPE OF WORK

From and after the Commencement of Services yəhaw will provide the Services (defined below) set out in this Scope of Work at the Property at a value of \$150,000/year.

- I. yəhaw will provide public benefits through delivery of cultural, arts, and/or educational programming and social services, economic development, and/or other programs and services consistent with the City’s EDI goals (“**Services**”) equivalent to the total EDI and SIF funds paid under this Agreement (up to the Maximum City Payment of \$1,995,000). yəhaw will design the Services to include some combination of the following services using an Indigenous methodology, as reasonably determined by yəhaw and subject to City confirmation of valuation:

- Employment and/or Education
- Public Health and/or Food Access Programs

In order for the City to accept Services to count towards the Maximum City Payment amortization, the City must approve an operations plan identifying the specific Services to be provided, which approval shall not be unreasonably conditioned, delayed, or withheld. It shall not be unreasonable for City to withhold approval of an operations plan that City determines in its reasonable discretion will not provide the expected annual public benefit value set out in the Amortization Schedule. If yəhaw provides all Services set out in the approved operations plan to the reasonable satisfaction of the City, then such Services shall not be subject to a Services Shortfall (defined below).

- II. In addition to direct provision of Services to the community, yəhaw will provide the following to support delivery of public benefits:
- a. Executing contracts with vendors, service providers to provide materials and services to accomplish the Project goals.
 - b. Maintaining the Project throughout its useful life.
 - c. Maintaining records, particularly as relates to compensation, matching funds, reports and insurance.
 - d. Committing to making a good faith effort to comply with the City’s affirmative action hiring requirements for the life of the Project, as identified in Section 401.
 - e. If required, maintaining a third-party liability insurance policy, including other applicable insurance policies, for the Project.
 - f. Providing documentation demonstrating the public benefit results from the Project for which support is awarded.

- III. If yəhaw provides agreed public benefits at the value expected by the Parties, the accrued value of the Services will be credited against the EDI and SIF funds paid. The anticipated amortization schedule, condensed to annual basis, appears as follows:

Amortization Schedule		
Year	Value of Services	Balance
2022	\$0	\$1,995,000
2023	\$100,000	\$1,895,000
2024	\$150,000	\$1,745,000

2025	\$150,000	\$1,595,000
2026	\$150,000	\$1,445,000
2027	\$150,000	\$1,295,000
2028	\$150,000	\$1,145,000
2029	\$150,000	\$995,000
2030	\$150,000	\$845,000
2031	\$150,000	\$695,000
2032	\$150,000	\$545,000
2033	\$150,000	\$395,000
2034	\$150,000	\$245,000
2035	\$150,000	\$95,000
2036	\$95,000	\$0

- IV. Within two (2) years after completion of the Facility, yəhaw̓ will provide the City with a plan demonstrating that there will be sufficient resources in the Facility building reserves to cover major infrastructure needs during the required compliance period.
- V. During the term of this Agreement, yəhaw̓ agrees to make available, on at least two (2) weeks prior written request of the City and subject to the mutual execution by the City and yəhaw̓ of a commercially reasonable license or use agreement, up to five free uses of the Property for the City of Seattle to use for an event, meeting, or workshop. Arrangements for this complimentary admission will be handled through the Office Contact, with any access intended to further the goals of the EDI program. Such use by the City shall be arranged so as not to interfere with or delay yəhaw̓’s ordinary course provision of Services under this Agreement. The City’s use of the Property shall count as a public benefit provided but shall not adjust the Amortization Schedule.
- VI. By December 31st of each year during the Term of this Agreement, yəhaw̓ will provide City a report of Services provided during the prior calendar year with either yəhaw̓’s good faith valuation of Services provided during that year or enough information to allow City to determine the value of Services provided.
- VII. If, after reviewing yəhaw̓’s annual report of Services, City determines in its sole and reasonable discretion that yəhaw̓ did not provide Services with an annual value of \$150,000 during the prior calendar year, City will confer with yəhaw̓ to discuss options for yəhaw̓ to provide the shortfall in consideration (“**Services Shortfall**”). After consulting with yəhaw̓, City may in its reasonable discretion require yəhaw̓ to (a) provide additional Services during the current year in an amount equal to the Services Shortfall; (b) provide additional Services during multiple years during the Term of the Agreement in a total amount equal to the Services Shortfall; or (c) repay the monetary value of Services Shortfall not provided. City and yəhaw̓ may alternatively mutually agree, each in their sole discretion, to extend the Term of the Agreement to allow yəhaw̓ additional time to provide Services with the understanding that such an extension will also extend the terms of the Restrictive Covenant Agreement and Deed of Trust.