

YAKIMA ECONOMIC DEVELOPMENT MARKETING AGREEMENT

By and Between
CITY OF YAKIMA

And
Hispanic Chamber of Commerce of Yakima

THIS YAKIMA ECONOMIC DEVELOPMENT MARKETING AGREEMENT (hereinafter the "Agreement") is executed by and between the City of Yakima, Washington, a municipal corporation (hereinafter "City") and the Hispanic Chamber of Commerce of Yakima, a Washington nonprofit corporation (hereinafter "Hispanic Chamber").

I. Recitals

A. The City desires to contract with the Hispanic Chamber for the promotion and marketing of the Cinco de Mayo Cultural Fiesta in Downtown Yakima, which promotes economic and business development, tourism activities, opportunities and programs within the City.

B. The Hispanic Chamber is a nonprofit corporation with charitable tax exempt status under Internal Revenue Code §501(c) (3), with offices located at 22 S. 3rd Avenue, Yakima, Washington 98902. The Hispanic Chamber's primary purpose is to promote business development and provide economic opportunities for Hispanic businesses and community development in neighborhoods within the City of Yakima.

C. The parties agree that the Hispanic Chamber will administer the funds and activities described below to promote economic development, business activities and tourism within the City in accordance with the terms and conditions of this Agreement.

II. Agreement

WHEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the City and the Chamber agree as follows:

1. Payment of Funds by City. In compensation for the services provided by the Hispanic Chamber under this Agreement, the City shall pay the Chamber an Administration Fee upon City's approval of the Action Plan provided in Section 4 below. The amount of the Administration Fee shall be Twenty Thousand Dollars (\$20,000.00) in the year 2018; after successful completion of the annual Action Plan for each of the succeeding two years the City will consider providing funding for 2019 and 2020. The

amounts awarded for each of these two subsequent years will be less than the funding provided the prior year and will be based on funding availability. After 2020, the City will provide no additional funding to produce the Cinco De Mayo celebration.

City may, at its sole discretion, require any request for payment of the above stated funding to be supported by documentation of services performed in accordance with the Scope of Services set forth in Exhibit "A" and the Action Plan. In the event that this Agreement is terminated prior to expiration of its three (3) year term, the Hispanic Chamber shall remit to the City any unearned or unaccounted portion of the Administrative Fee as set forth in Section 5 below.

2. Term of Agreement. This Agreement shall commence upon approval and execution of this Agreement by both parties and shall terminate at midnight May 31, 2020.

3. Scope of Services. The Hispanic Chamber shall use the funds received from the City to perform and administer the services and functions set forth as follows:

- a. Contract with bands and/or performers to provide entertainment at the Cinco de Mayo Cultural Fiesta event held in downtown Yakima;
- b. Contract with the necessary audio supporter services to produce and provide high quality presentation of entertainment to the audience and for the benefit of the community; and,
- c. Market the entertainment options of the Cinco de Mayo Cultural Fiesta event to the community.

4. Hispanic Chamber's Action Plan, Proposed Budget and Reports. An Action Plan shall be provided which will generally describe the programs and timelines for performance of the services set forth in the Scope of Services. The Hispanic Chamber will consult with City in the performance of such Action Plan as necessary, and City reserves the right to require modifications of such Action Plan if the City determines that such modifications are reasonably necessary to accomplish the purposes of this Agreement. The Hispanic Chamber shall prepare and provide to City a written report listing and describing the Hispanic Chamber's Cinco de Mayo Cultural Fiesta events, plans, programs and timelines to provide the services described in the Scope of Services and Action Plan as well as a description of the actual events held, their effect, attendance and outcome post-event. No portion of the Administration Fee shall be used by Hispanic Chamber for capital expenditures or for the purchase of capital assets. Use of funds for any purpose outside of the Action Plan and scope of this Agreement is a violation of this Agreement.

5. Termination of Agreement. This Agreement may be terminated by either party for any reason upon thirty (30) calendar days' advance written notice to the other party. Upon the effective date of termination, the Hispanic Chamber will remit any unearned, unaccounted or uncommitted portion of the Administration Fee, together with documentation supporting the expenditure or commitment of funds incurred in the performance of the Scope of Services occurring prior to the effective date of termination. "Commitment of funds" means those funds necessary to defray costs of any contracts with third parties entered into by Hispanic Chamber for the sole benefit of City as set forth in the Action Plan. Notwithstanding the above, upon termination of this Agreement by City pursuant to this Section 5, the Hispanic Chamber shall use best efforts to terminate any contract entered into by Hispanic Chamber for the sole benefit of City unless otherwise directed in writing by City.

6. Property and Equipment. The parties do not intend to purchase property and/or equipment with the proceeds paid to Hispanic Chamber pursuant to this Agreement.

7. Records and Accounts. The Hispanic Chamber shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the costs, expenses, and expenditures incurred and/or made pursuant to this Agreement. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the City of Yakima and/or of the Washington State Auditor. The Hispanic Chamber shall make such books, accounts, records, documents and other materials available and afford the proper facilities for such inspection and/or audit within forty-eight (48) hours of inspection/audit notification from any of said local and/or state government representatives. Said books, accounts, records, documents and other materials may be copied by said local and/or state government representatives as part of such an inspection/audit. The Hispanic Chamber shall submit a written report to the City Manager no later than 30 days after the conclusion of the event that includes the following details: attendance, financial success of the event and other pertinent post-event information.

The records relating to this Agreement must be made available to the City, and the records relating to Scope of Services in this Agreement are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to the Hispanic Chamber's Scope of Services under this Agreement must be retained by the Hispanic Chamber for a minimum of six (6) years after the end date or termination of this Agreement. The records shall at all times be subject to inspection by and with the

approval of the City of Yakima, and will be provided to the City upon the City's request. This Section shall survive the termination of this Agreement.

8. Insurance. It is understood the City does not maintain liability insurance for the Hispanic Chamber and/or its officers, employees, agents and/or subcontractors.

9. Hold Harmless.

- a. The Hispanic Chamber agrees to protect, defend, indemnify, and hold harmless the City and its officers, elected and appointed officials, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any negligent act and/or omission of the Hispanic Chamber, its officers, employees, agents, and/or subcontractors, arising out of or in connection with duties, obligations, and services required of the Hispanic Chamber under this Agreement.
- b. In the event that both the Hispanic Chamber and the City are negligent, the Hispanic Chamber's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liabilities, damages, judgments, costs and expenses (including reasonable attorneys' fees) that can be apportioned to the Hispanic Chamber, its officers, employees, agents and/or subcontractors.
- c. Nothing contained in this Section or this Agreement shall be construed to vest a right of defense and/or indemnification in any third party.
- d. The provisions of this Section or this Agreement shall survive the termination or expiration of this Agreement.

10. Independent Contractor. In performing this Agreement, the Hispanic Chamber is an independent contractor, not subject to control or direction from the City except for such oversight as is herein described and set forth by City ordinance. The Hispanic Chamber expressly represents warrants and agrees that its status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Hispanic Chamber and its officers, employees, agents, subcontractors and volunteers shall make no claim of City employment nor shall claim against the City any related employment benefits, social security and/or retirement benefits.

11. Taxes and Assessments. The Hispanic Chamber shall be solely responsible for compensating its officers, employees, agents and/or subcontractors and for paying all related taxes, deductions and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of or in connection with the duties, obligations and services required of the Chamber under this Agreement, the Hispanic Chamber shall pay the same before it becomes due.

12. Nondiscrimination. During the performance of this Agreement, the Hispanic Chamber shall not discriminate on the basis of age, sex, race, creed, and religion, and color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. The Hispanic Chamber agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

13. The Americans with Disabilities Act. The Hispanic Chamber shall comply with the Americans with Disabilities Act of 1990, 42 U.S.C §§ 12101 et seq. (“ADA”) and its implementing regulations and Washington state’s anti-discrimination law as set forth in Chapter 49.60 RCW (“WLAD”) and its implementing regulations, with regard to the provision of services under this Agreement. The ADA and the WLAD provide comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, public transportation, state and local government services and telecommunications.

14. Compliance with Law. The Hispanic Chamber shall provide all services under this Agreement in full compliance with any and all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local or otherwise. This includes compliance with all permit conditions and Yakima Municipal Code Chapter 9.70: Special Events.

15. Assignment. This Agreement or any interest therein, or claim hereunder, shall not be assigned or transferred in whole or in part by the Hispanic Chamber to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations and liabilities of the Hispanic Chamber as stated herein.

16. Severability.

- a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.
- c. Should either party determine that the severed portions substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, said party may, in its sole discretion, terminate this Agreement upon thirty (30) calendar days' advance written notice to the other party.

17. Non-waiver. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the other party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

18. Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their respective addresses as follows:

To the City: Cliff Moore, City Manager
 City of Yakima
 129 North 2nd Street
 Yakima, Washington 98901

To the Chamber: Daniel Flores, President
 Hispanic Chamber of Commerce of Yakima County
 22 S. 3rd Avenue
 Yakima, Washington 98902

Mailing:
P.O. Box 11146
Yakima, Washington 98909

Or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

19. Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

20. Integration and Supersession. This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements, which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as herein provided, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Venue. The venue for any action to enforce or interpret this Agreement shall lie in a court of competent jurisdiction in Yakima County, Washington.

23. Dispute Resolution. The parties shall strive to resolve any dispute that may arise through mutual cooperation and negotiation in good faith. If the dispute is not resolved through negotiation, the parties may consider mediation or another form of dispute resolution, but only where mutually agreed to in writing.

WHEREFORE, the parties have executed this Agreement as set forth below:

CITY OF YAKIMA

**HISPANIC CHAMBER OF
COMMERCE OF YAKIMA**

By: _____
Cliff Moore, City Manager

By: _____
Daniel Flores, President

Date: _____, 2018

By: _____

Luz Bazan Gutierrez, Secretary

ATTEST:

Date: _____, 2018

By: _____
Sonya Claar Tee, City Clerk