

**FIREWORKS DISPLAY AND ENTERTAINMENT AGREEMENT – 2018
BETWEEN THE CITY OF YAKIMA AND
THE YAKIMA FOURTH OF JULY COMMITTEE**

THIS FIREWORKS DISPLAY AND ENTERTAINMENT AGREEMENT – 2018 ("Agreement") is made and entered into by and between the City of Yakima, hereinafter the "City", and the Yakima Fourth of July Committee, a nonprofit corporation, hereinafter the "Committee."

WHEREAS, the City desires a fireworks display on the evening of July 4, 2018, for the benefit of the public and to celebrate the independence of the United States of America; and

WHEREAS, the City has budgeted Twenty Thousand and No/100 Dollars (\$20,000) in 2018 for said fireworks display and has \$5,000 in the Special Event Fund to assist with entertainment; and

WHEREAS, the Committee has the experience, expertise, materials, and personnel to provide said fireworks display;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and the Committee as follows:

1. Scope of Services. The Committee agrees to provide a fireworks display (including necessary personnel and materials) and community entertainment on the evening of July 4, 2018.

2. Term of Agreement. The term of this Agreement commences upon execution hereof and shall terminate upon satisfactory provision of the services required hereunder and payment by the City of the necessary consideration to Committee stated in Section 3, unless sooner terminated by either party in accordance with Section 16.

3. Consideration. In order to enable the Committee to purchase or otherwise acquire the necessary fireworks and accessory equipment or products to provide the July 4, 2018 public fireworks display, the City agrees to pay the Committee a total sum not to exceed Twenty Thousand and No/100 Dollars (\$20,000), and further agrees to provide an additional Five Thousand and No/100 Dollars (\$5,000) to be used for entertainment during the event. In the event the public fireworks display is not conducted the Committee shall return and remit all such funds to the City. The City will consider providing funding for the 2019 and 2020 community entertainment portion of the events. The two amounts awarded for each of these two subsequent years may be less than the funding provided the prior years and will be based on funding availability. After 2020, the City will provide additional funding to produce the Apple Jam Battle of the Bands. The City, based on available resources, will continue to provide assistance for the 4th of July fireworks into the future to assist with fire safety issues in City limits.

4. Inspection and Audit. The Committee shall maintain books, accounts, records, documents and other evidence pertaining to the costs and expenses allowable and consideration paid under this agreement in accordance with generally accepted accounting practices. All such books of account and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and /or of the Washington State Auditor at all reasonable times, and the Committee shall afford the proper facilities for such inspection and audit. Such books of account and records may be copied by representatives of the City and/or of the Washington State Auditor where necessary to conduct or document an audit. The Committee

shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement.

5. Status of Committee. Committee and the City understand and expressly agree that Committee is an independent contractor in the performance of each and every part of the Agreement. Committee and its employees shall make no claim of City employment nor shall claim against the City and related employment benefits, social security, and / or retirement.

6. Reports. The 4th of July Committee shall submit a written report to the City Manager no later than 30 days after the conclusion of the July 4, 2018 event, including the following details: attendance, financial success of the event and other pertinent event information. A full financial report detailing the event will be required to qualify to receive funding for the 2019 event.

7. Taxes and Assessments. Committee shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, 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 this Agreement, Committee shall pay the same before it becomes due.

8. Nondiscrimination Provision. During the performance of this Agreement, Committee shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, nation origin, creed, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. 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, and selection for training.

9. Compliance with Law. Committee agrees to perform those services under and pursuant to 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.

10. No Insurance. It is understood the City does not maintain liability insurance for Committee and/or its employees.

11. Indemnification and Hold Harmless.

- a. Committee shall defend, indemnify, and hold harmless the City, its elected officers, officials, employees and agents from and against all claims, causes of action, damages, losses, and expenses of any kind or nature whatsoever, including but not limited to, attorney's fees and court costs, arising out of, relating to, or resulting from Committee's performance or non- performance of the services, duties and obligations required of it under this Agreement.
- b. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.
- c. This Section of the Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

12. Liability Insurance. On or before the date this Agreement is fully executed by the parties, Committee shall provide the City with a certificate of insurance as proof of liability insurance with minimum liability limit of Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the duration of this Agreement. The policy shall name the City, its elected officials, officers, agents, and employees as additional insureds. The insured will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A V- II or higher in Best's Guide and admitted in the State of Washington. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

13. Assignment. This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Committee 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 Committee stated herein.

14. Waiver of Breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the 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.

15. Severability. If any portion of this Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

16. Terminate. Either party may terminate this Agreement, with or without cause, by giving the other party five (5) calendar days advance written notice of termination.

17. 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.

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

TO CITY: City Manager
City of Yakima City Hall
129 North 2nd Street
Yakima, WA 98901

TO COMMITTEE: _____
Chair of the Yakima 4th of July Committee

Yakima, WA 9890 _____

Or to such other 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. Integration. This written document constitutes the entire agreement between the City and Committee. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

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

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

WHEREFORE, this Agreement shall be effective on the date signed by the last party to sign below.

CITY OF YAKIMA

YAKIMA FOURTH OF JULY COMMITTEE

By: _____
Cliff Moore, City Manager

By: _____

Date: April ____, 2018

Date: April ____, 2018

ATTEST:

By: _____
Sonya Claar Tee, City Clerk