

YAKIMA TOURISM PROMOTION AREA ADMINISTRATION AGREEMENT

By and Between
CITY OF YAKIMA

And
YAKIMA VALLEY VISITORS AND CONVENTION BUREAU

THIS YAKIMA TOURISM PROMOTION AREA ADMINISTRATION AGREEMENT (hereinafter the "Agreement") is executed by and between the City of Yakima, Washington, a municipal corporation (hereinafter the "City") and Yakima Valley Visitors and Convention Bureau, a Washington nonprofit corporation (hereinafter the "Bureau").

I. Recitals

A. The City desires to contract with the Bureau for the activities and programs of the Yakima County Tourism Promotion Area ("TPA") and to prepare the TPA Annual Budget in accordance with the terms and conditions of this Agreement.

B. The Bureau is a nonprofit corporation whose membership represents the hospitality industry, for which the Bureau serves as a focus of efforts to promote convention and tourist activities which are vital to the local economy.

C. The Bureau ~~is will to administer~~currently administers the activities and programs of the Yakima County Tourism Promotion Area and ~~to prepare~~prepares the TPA Annual Budget 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 Bureau agree as follows:

1. **Definitions.** As used in this Agreement, the following terms, unless the context otherwise dictates, shall have the following meanings:

- a. "Interlocal Agreement" shall mean the April 13, 2004 Interlocal Cooperation Act Agreement for Establishment of Yakima County Tourism Promotion Area between the City of Yakima, ~~the City of Selah, the City of Union Gap,~~ and Yakima County for the establishment of a Yakima County Tourism Promotion Area by the City of Yakima as authorized by RCW 35.101.040(2).

- b. "Lodging Business" means a business located within the Yakima County Tourism Promotion Area that furnishes lodging taxable by the state under Chapter 82.08 RCW that has forty (40) or more lodging units.
- c. "Operator" means the operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sub-lessee, mortgagee in possession, licensee, designee, or any other similar capacity.
- d. "The Yakima Hotel and Motel Commission" means the Yakima Hotel and Motel Commission, established by the City of Yakima, whose five voting members are appointed by the City Council of the City of Yakima, with two additional non-voting members, one appointed by the City Council of the City of Selah, the City Council of the City of Union Gap, and one by the Board of County Commissioners of Yakima County, to provide recommendations to the City Council of the City of Yakima ~~enfor~~ proposed uses activities and projects of expenditures to which the Yakima County Tourism Promotion Area revenues may be applied, pursuant to the provisions of RCW 35.101. ~~131(1), 010 through 140,~~ as provided in this Agreement.
- e. The "promotion of tourism and convention business" means activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists and operating tourism destination marketing organizations.
- f. "Tourism Promotion Charge" means the charge imposed by the City of Yakima on ~~the furnishing of~~ lodging furnished by a Lodging Business within the Yakima County Tourism Promotion Area under the authority of RCW 35.101.050 for the purpose of providing ~~for funding~~ effor the promotion of tourism and convention business in Yakima County.
- g. "Yakima County Tourism Promotion Area" means the Tourism Promotion Area comprising the City of Yakima, ~~the City of Selah, the City of Union Gap,~~ and the unincorporated area of Yakima County ~~as~~ created by the Ordinance No. ~~2004-12-2004-17~~ and revised by Ordinance No. 2011-21, of the City Council of the City of Yakima, pursuant to the authority of Chapter 35.101 RCW; and as authorized by the resolutions of the City Council of the City of Yakima, ~~the City Council of the City of Selah, the City Council of the~~

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~~City of Union Gap~~, and the Board of County Commissioners of Yakima County, adopting the terms of this Agreement.

2. **Scope of Services.**

- a. **TPA Administration.** The Bureau shall administer the activities and programs of the Yakima County Tourism Promotion Area in compliance with all applicable provisions of state and local laws, including resolutions and ordinances relating to the creation and operation of the TPA, the Interlocal Agreement and all regulations lawfully imposed by the State Auditor and other state agencies. The Bureau shall provide and manage accounting systems and staff to 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.
- b. **Preparation of TPA Annual Budget.** The Bureau shall ~~also~~ prepare an Annual Budget for the Yakima County Tourism Promotion Area to be reviewed and approved by the Yakima Hotel and Motel Commission and submitted to the City Council of the City of Yakima on or before ~~November 1 of each year. The Bureau shall also act as staff to the Yakima Hotel and Motel Commission in conjunction with assisting it in determining what activities and programs to recommend for funding from the Tourism Promotion Charges.~~ September 1 of each year for review and approval. The Proposed budget shall include forecasted revenue, staffing levels, expenditures and marketing and promotion strategy summaries that provide proposed accomplishments and statistical milestones. Any additional TPA revenue expenditures must be submitted to the City Manager for inclusion on a City Council agenda for Council review and approval.
- c. **Reporting.** The Bureau shall submit a monthly report to the City Manager that provides operational statistics and accomplishments, which shall include (1) the number of city-wide hotel stays generated by the Bureau, (2) the number of convention center event days and attendees, (3) the number of material sporting events and attendees, together with Marketing & Promotional activities and accomplishments. The monthly report shall also include a summary of monthly TPA revenue receipts and expenditures. Changes in staffing shall also be included.

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3. **TPA Annual Budget.** The TPA Annual Budget shall consist of:

- a. A list of the Lodging Businesses and number of hotel rooms subject to the Tourism Promotion Charges ~~and that includes a total~~ estimate of the revenue forecast to be received from all such Lodging Businesses.

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- ~~b.~~ Ab. A proposed line-item expense budget with accompanying explanatory statement describing all proposed uses of Tourism Promotion ChargeArea revenue ~~for to accomplish~~ the purpose of promoting tourism and convention business in the Yakima County Tourism Promotion Area for the ensuing fiscal year, as recommended by the Yakima Hotel and Motel Commission.

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4. **UseExpenditure of Tourism Promotion Charge Revenues for the Promotion of Tourism and Convention Business in Yakima County.**

- a. It is understood and agreed that all of the revenues from the Tourism Promotion Charges collected by the City of Yakima from Lodging Businesses within the jurisdiction of the City of Yakima, ~~the City of Selah, the City of Union Gap,~~ and unincorporated areas of Yakima County shall be allocated by the City Council of the City of Yakima in accordance with the TPA Annual Budget. The Yakima Hotel and Motel Commission shall make a recommendation to the City Council of the City of Yakima on all TPA Annual Budgets. The City Council of the City of Yakima shall have the ultimate authority to set and approve all TPA Annual Budgets.
- b. The revenues from the Tourism Promotion Charges imposed by the City of Yakima on ~~the furnishing of~~ lodging furnished by the Lodging Businesses situated within the TPA shall be used for the following purposes only:
- i. The funding of all activities and expenditures designed to increase tourism and convention business within the ~~area of the jurisdiction of the City of Yakima, the City of Selah, the City of Union Gap,~~ and the unincorporated areas of Yakima County, as specified in the TPA Annual Budget, that benefit local tourism and result in overnight stays at Lodging Businesses within the TPA; and

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ii. ~~The marketing of tourism and convention business that benefit local tourism and result in overnight stays within the TPA; and~~

iii. The marketing of Yakima County to the travel industry ~~in order~~ to benefit local tourism and convention business and result in overnight stays at Lodging Businesses within the TPA; and

iv. The marketing of Yakima County to recruit major sporting events in order to promote local tourism, resulting in overnight stays at Lodging Businesses within the TPA.

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c. All Tourism Promotion ~~Charges~~Charge revenues received by the City of Yakima from the Washington State Department of Revenue ~~and any interest therein~~ shall be deposited by the City of Yakima in a ~~special account. Payments~~separate fund and remitted to the ~~Bureau as~~Bureau's TPA Manager ~~will be made as provided for in the agreement between the City of Yakima and the Bureau.~~ No Tourism Promotion ~~Charges~~ shall be dispersed in any fiscal year until after the adoption of that year's fiscal annual Budget. ~~Provided further, the City of Yakima shall not expend in any fiscal year Tourism Promotion Charges in excess of the approved fiscal Annual Budget.~~Charge revenues shall be disbursed without City Council budgetary approval.

5. **Annual Administration Fee.** ~~As~~ compensation for the administrative services provided by the Bureau under this Agreement, the ~~City~~Bureau shall ~~pay the Bureau~~retain an Annual Administration Fee. ~~The amount of the Annual Administration Fee shall be set and provided for in the TPA Annual Budget. The said annual fee shall be paid not to exceed the greater of \$19,000 or 2.95% of budgeted TPA revenue approved by City Council in the Adopted Budget. The fee shall be retained in equal monthly installments. The City shall make each payment to the Bureau by the 10th day of each month. The Bureau may request an of the calculated annual adjustment of the Annual Administration Fee during the budget process used to establish the TPA Annual Budget.~~fee amount. In the event that ~~the~~this Agreement is terminated prior to its term, the Bureau shall be compensated on a pro-rata basis through the termination date.

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6. **Term of Agreement.** This Agreement shall commence January 1, ~~2015~~2020, following full execution by the parties, and shall terminate at midnight, December 31, ~~2019~~2024.

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7. Termination of Agreement.

This Agreement may be terminated in accordance with the following:

- a. By either party without cause upon ninety (90) calendar days' advance written notice to the other party;
- b. When a party fails to cure a default for thirty (30) calendar days following hand delivery or mailing of a written notice of default from the other party;
- c. In the event that a portion(s) of this Agreement is severed by a court of competent jurisdiction and either party determines that the severed portion(s) substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, said party may, in its discretion, terminate this Agreement upon thirty (30) calendar days' advance written notice to the other party; or
- d. Disestablishment of the Yakima County Tourism Promotion Area as provided in the Interlocal Agreement.

8. Property and Equipment. The City of Yakima shall be the owner of all property and equipment purchased by the Bureau from Tourism Promotion Charge revenues; provided, however, in the event of termination of this Agreement, the City of Yakima agrees to make the property and/or equipment available to the successor TPA Manager for its use in conjunction with providing similar services. Additionally, in the event of disestablishment of Yakima County Tourism Promotion Area, all property and equipment purchased by the Bureau from Tourism Promotion Charge revenues shall be retained by the City of Yakima and used for any lawful purpose.

9. Records and Accounts. The Bureau 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, ~~City of Selah, City of Union Gap,~~ Yakima County and/or ~~of~~ the Washington State Auditor. The Bureau 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 Bureau shall preserve and make available all books, accounts, records, documents and other materials for a period of at least ~~three~~ (3seven (7)) years after termination of Agreement.

10. Insurance Requirements.

- a. Liability Insurance. ~~_____~~ On or before this Agreement is fully executed by the parties, the Bureau shall provide the City with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City of Yakima, ~~City of Selah, City of Union Gap, and~~ Yakima County, and their respective elected officials, officers, agents, employees, and volunteers as additional insureds. The insured shall 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-VII or higher in Best's Guide and admitted in the State of Washington.
- b. Automobile Liability Coverage. ~~_____~~ On or before this Agreement is fully executed by the parties, the Bureau shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate. The required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The policy shall name the City of Yakima, ~~City of Selah, City of Union Gap, and~~ Yakima County, and their

respective elected officials, officers, agents, employees, and volunteers as additional insureds. The insured shall 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-VII or higher in Best's Guide and admitted in the State of Washington.

- c. Failure of either or all of the additional insureds to report a claim under such ~~insurance~~ insurance shall not prejudice the rights of ~~any~~ the named city or county, ~~or~~ their respective officers, employees, agents, and representatives ~~there under~~ thereunder. The named ~~cities'~~ city's and county's elected officials, officers, principals, employees, representatives, and agents shall have no obligation for payment of premiums ~~because as~~ a result of being named as additional insureds under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to expire, or changed in any manner that affects the rights of the City until thirty (30) days after written notice to the City of such intended cancellation, expiration or change.
- d. This Section of the Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

11. **Hold Harmless and Indemnification.**

- a. The Bureau agrees to protect, defend, indemnify, and hold harmless the City and its officers, elected 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 Bureau, its officers, employees, agents, and/or subcontractors, arising out of or in connection with duties, obligations, and services required of the Bureau under this Agreement.
- b. In the event that both the Bureau and the City are negligent, the Bureau'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 Bureau, its officers, employees, agents and/or subcontractors.

- c. Nothing contained in this Section or this Agreement shall be construed to vest a right of indemnification in any third party.
- d. The provisions of this Section or this Agreement shall survive the termination or expiration of this Agreement.

12. **No Insurance Provided by the City.** It is understood the City does not maintain liability insurance for the Bureau and/or its officers, employees, agents and/or subcontractors.

13. **Independent Contractor.** In performing this Agreement, the Bureau 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 Bureau 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 Bureau 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.

14. **Taxes and Assessments.**- The Bureau 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 Bureau under this Agreement, the Bureau shall pay the same before it becomes due.

15. **Nondiscrimination.** -During the performance of this Agreement, the Bureau shall not discriminate on the basis of age, sex, race, creed, religion, 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. -Bureau agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

16. **The Americans with Disabilities Act.**—The Bureau 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.
17. **Compliance with Law.**— The Bureau 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.
18. **Assignment.** -This Agreement, or any interest therein, or claim hereunder, shall not be assigned or transferred in whole or in part by the Bureau 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 Bureau as stated herein.
19. **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.
20. **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.

21. **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: ~~Tony O'Rourke~~, City Manager

City of Yakima

129 North 2nd Street

Yakima, Washington 98901

To the Bureau: ~~John Cooper~~, President & CEO

Yakima Valley Visitors & Convention Bureau

10 North 8th Street

Yakima, Washington 98901

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.

22. **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.
23. **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.
24. **Governing Law.** —This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
25. **Venue.** —The venue for any action to enforce or interpret this Agreement shall lie in ~~the Superior Court~~ the court of ~~Washington for~~ competent jurisdiction in Yakima County, Washington.

26. **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 other 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

**YAKIMA VALLEY VISITORS AND
CONVENTION BUREAU**

By: _____
~~Tony O'Rourke~~Cliff Moore, City Manager

By: _____
~~John Cooper~~, President & CEO

Date: _____, ~~2014~~2019

By: _____

Date: _____,

~~2014~~2019

ATTEST:

By: _____
~~Sonya Claar Tee~~, City Clerk

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8/6/2019