

**YAKIMA DOWNTOWN DEVELOPMENT AND PROMOTION AGREEMENT
BY AND BETWEEN
CITY OF YAKIMA
AND
DOWNTOWN ASSOCIATION OF YAKIMA**

This YAKIMA DOWNTOWN DEVELOPMENT AND PROMOTION AGREEMENT (hereinafter referred to as the "Agreement") is executed by and between the City of Yakima, a Washington municipal corporation (hereinafter referred to as the "City") and the Downtown Association of Yakima, a Washington non-profit corporation (hereinafter referred to as "DAY").

1. Recitals

A. The City has a deep and abiding interest in the maintenance, beautification, promotion and preservation of the City's downtown core; and

B. The City has expended significant resources toward the improvement of the sidewalks and general appearance of the City's downtown areas through the installation of sidewalks, street lighting, aesthetic improvements and planting displays; and

C. The City has previously contracted with DAY for downtown development and promotion and was satisfied with DAY's promotion of downtown and activities therein; and

D. The City desires to continue its contractual relationship with DAY for the development and promotion of economic development, beautification, tourism and recreational activities, opportunities and programs within the downtown district; and

E. DAY is a nonprofit corporation with charitable tax exempt status under the Internal Revenue Code whose primary purpose is to promote economic development, educational and charitable opportunities within the City, and to administer a Main Street Program benefitting residents of the City and the City's downtown; and

F. In accordance with RCW 82.73 that governs the Main Street Program, the City will be eligible to receive a credit on its 2021-2023 Public Utility Tax liability of up to 75% of the total paid to DAY in 2021-2023, currently capped at \$100,000.00; and

G. The parties agree that DAY will administer the funds and activities described below to promote economic development, downtown beautification, recreational activities and tourism within the downtown district in accordance with the terms and conditions of this Agreement.

2. Agreement

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

1. Payment of Funds by City. In compensation for the services provided by DAY under this Agreement, the City agrees to apply for the maximum amount of available funding from the Main Street Tax Credit authorized pursuant to Chapter 82.73 RCW and make the funding available to DAY for the scope of work addressed in Section 4 of this Agreement. In exchange for applying for this funding.

The reimbursement of funds would be made in three payments upon approval of DAY's Action Plan addressed in Section 5 of this Agreement. The first fifty (50) percent of the total reimbursement payment shall be made within ten (10) days of the annual approval of the Action Plan; the second reimbursement payment of twenty-five (25) percent of the total reimbursement shall be due on June 1 of each contract year; and the third and final reimbursement payment of twenty-five (25) percent of the total reimbursement payment shall be due on September 1 of each contract year. In the event that the Agreement is terminated prior to expiration of this Agreement in a year where the Main Street Tax Credit has been obtained, DAY shall be compensated on a pro-rata basis for work performed through the termination date, less any unpaid balance of the reimbursement value.

2. No Payment if Tax Credit Not Received. In the event the City applies for the Main Street Tax Credit and does not receive said credit one or more years during the term of this Agreement, this Agreement shall not be effective during the year(s) the tax credit is not obtained and neither party is under any obligation to carry out the terms and conditions of the Agreement during said year. The City shall attempt to secure the Main Street Tax Credit each year during the term of this Agreement, but DAY shall have no recourse in the event the City does not secure the credit for any reason. If funding is not secured for the year 2023, the final year of the Agreement, this Agreement will automatically terminate.

3. Term of Agreement. This Agreement shall commence January 1, 2021, following full execution by the parties and shall terminate at midnight, December 31, 2023. During this time period it is understood that the City will apply for the full amount of funding permitted by statute from the Main Street Tax Credit program pursuant to Chapter 82.73 RCW. During the term of this Agreement, DAY will reserve one board seat for a representative from the City staff to be designated by the City Manager.

4. Scope of Services. DAY shall use the funds received from the City to promote:

- a. Beautification of the City's downtown;
- b. Economic development opportunities within the City's downtown;
- c. Opportunities within the City's downtown;
- d. Tourism within the City's downtown; and
- e. The administration of such activities.
- f. Provide promotional and economic tools

The "promotion of economic development, recreation and tourism" means and includes activities and expenditures designed to increase tourism, recreational use opportunities and economic development including, but not limited to: 1) advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; 2) promoting recreational opportunities and major sporting and entertainment events within the City's downtown; and 3) cooperating with tourism destination marketing organizations and other persons, organizations and public or private agencies promoting economic development opportunities within downtown Yakima. Such funds may also be used to defray DAY's costs incurred from managing and administering such activities.

By way of illustration, the program's and services to be provided by DAY under this Agreement, and included in DAY's Action Plan, identified in Section 5 below, may include the following:

- Provide paid leadership to implement the work plan and the four point Main Street approach to downtown revitalization

- Upgrades to downtownyakima.com or any other websites operated by DAY that promote downtown Yakima
- Holiday promotions including producing holiday tree lighting events, free carriage rides, merchant open houses, and advertising
- Development and publishing of new downtown promotional brochures and pocket calendar guides
- New events and programming created by DAY
- Continued management events and activities designed to bring people downtown
- Year-round downtown promotional media campaign
- Training and travel fees for Washington State Main Street program annual conference and quarterly meetings
- DAY coordination and management of flower baskets for the downtown district

5. Termination of this 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, City shall have no further obligation to pay any remaining funds to DAY except for those funds necessary to defray costs of any contracts with third parties entered into by DAY 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, DAY shall use its best efforts to terminate any contract for the sole benefit of the City entered into by DAY, unless otherwise directed in writing by the City.

6. Property and Equipment. The parties do not intend to purchase property and equipment with the proceeds paid to DAY pursuant to this Agreement. Unless otherwise agreed, any property and equipment purchased by DAY shall remain property of DAY.

7. Records and Accounts. DAY 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 the Washington State Auditor. DAY 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. DAY shall preserve and make available all books, accounts, records, documents and other materials for a period of at least six (6) years after termination of this Agreement.

Further, all records relating to the work or activities done under this Agreement by DAY must be made available to the CITY. 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 DAY's activities under this Agreement must be retained by DAY for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.

This provisions of this Section shall survive the termination or expiration of this Agreement.

8. **Insurance.** It is understood that the City does not maintain liability insurance for DAY and/or its officers, directors, employees, agents, volunteers and/or subcontractors.

9. **Hold Harmless.**

- A. DAY agrees to protect, defend, indemnify, and hold harmless the City and its officers, elected and appointed officials, employees, attorneys, agents and volunteers 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 DAY, its officers, directors, agents, volunteers and/or subcontractors, arising out of or in connection with duties, obligations, and services required of DAY under this Agreement.
- B. In the event that both DAY and the City are negligent, DAY'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 DAY, its officers, directors, employees, agents, volunteers 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 shall survive the termination or expiration of this Agreement.

10. **Independent Contractor.** In performing this Agreement, DAY 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. DAY 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. DAY and its officers, directors, employees, agents, volunteers and subcontractors 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.** DAY shall be solely responsible for compensating its officers, directors, employees, agents, volunteers and/or subcontractor 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 DAY under this Agreement, DAY shall pay the same before it becomes due.

12. **Nondiscrimination.** During the performance of this Agreement, DAY 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. DAY 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. DAY shall comply with the Americans With Disabilities Act of 1990, 42 USC section 12101 et.seq. ("ADA") and its implementing regulations and any amendments thereto, as well as Washington state's anti-discrimination law as set forth in Chapter 49.60 RCW ("WLAD") and its implementing regulations and any amendments thereto, with regard to the provision of services under this Agreement. The ADA and 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. DAY 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.

15. Assignment. This Agreement, or any interest therein, or claim hereunder, shall not be assigned or transferred in whole or in part by DAY to any other person or entity without the prior written consent of the City. The City shall have sole discretion to determine whether to assign this Agreement, or any interest therein, or claim hereunder. In the event that the City grants the request for assignment, then the assignee shall assume all duties, obligations and liabilities of DAY 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:	Robert Harrison, City Manager City of Yakima 129 N. 2 nd Street Yakima, WA 98901
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To DAY: Andrew Holt, Executive Director
Downtown Association of Yakima
14 South 1st Street
Yakima, WA 98901

John Baule, Treasurer
Downtown Association of Yakima
14 South 1st Street
Yakima, WA 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 three mailing days after the date the notice is mailed, or the date on which the notice is 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 herein and supersedes any and all such former agreements, which are hereby declared terminated and of no further force and effect, except those terms that survive the agreement, upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as provided herein, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

21. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County.

22. 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

DOWNTOWN ASSOCIATION OF YAKIMA

By: _____
Robert Harrison, City Manager

By: _____
Joe Mann, President

Date: _____

By: _____
Andrew Holt, Executive Director

Date: _____

ATTEST:

By: _____
Sonya Claar Tee, City Clerk