

MUNICIPAL SERVICES CONTRACT
for
DOWNTOWN VIBRANCY FUNDING PACKAGE

THIS CONTRACT is made on the date of the last authorizing signature below (which is the “effective date”) by the City of Olympia, a municipal corporation, (“City”) and Olympia Downtown Association, a Washington non-profit corporation (“ODA”).

WHEREAS, City desires to have certain services performed as described below, which require specialized skills and other supportive capabilities; and

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, ODA represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this contract;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained in this contract, the parties agree as follows:

1. Services.

ODA shall perform such services and accomplish such tasks, including the furnishing of all personnel, materials, and equipment necessary for full performance, as identified and designated as ODA responsibilities throughout this contract and as detailed in **Exhibit A**, attached to this contract (“Services”).

2. Reporting Requirements.

ODA shall submit with all payment invoices a report that outlines the service or project(s) completed as of the time of invoicing.

ODA shall submit reports (activity, service, financial, etc.) upon request by City.

3. Duration of Contract.

The term of this contract and the performance of ODA commences as of the effective date and ends no later than December 31, 2025.

4. Compensation and Method of Payment.

A. City shall make payments for services on a reimbursement basis unless otherwise permitted by law and approved in writing by City. ODA shall submit final invoices, along with any required reports to City prior to December 31, 2025 to avoid loss of funding.

B. No payment will be made for any services rendered by ODA except for services identified and set forth in this contract.

C. City shall reimburse ODA for services performed under this contract in an amount not to exceed **Two Hundred and Eighty-Five Thousand Dollars and No Cents (\$285,000.00)** payable within 30 days of receipt of a properly completed invoice as set forth in this section.

D. ODA shall submit to City an itemized invoice executed in accordance with **Exhibit C**, attached to this contract. On an invoice, ODA shall document which services detailed in **Exhibit A** were performed and the cost of the services.

- E. ODA shall attach to the invoice copies of any invoices, statements, and cancelled checks for goods or services purchased by ODA and for which reimbursement under terms of this contract is being requested. If the invoice includes costs for staff time to provide the services, an itemization of staff hours must be listed with the requested reimbursement being equal to the number of itemized hours multiplied by the hourly rate for staff to provide the services. ODA shall list lump sum services for reimbursement as they are outlined in the applicable Exhibits.

ODA shall provide other documentation as requested by the City.

5. Internal Control.

ODA shall establish and maintain a system of internal control to ensure the efficient and proper processing and use of contract funds.

6. Books and Records/Public Records/Audit.

A. ODA shall maintain books, records, and documents that sufficiently and properly reflect all work, as well as direct and indirect costs, related to the performance of this contract. In addition, ODA shall maintain such accounting procedures and practices to assure proper accounting of all funds paid pursuant to this contract. All ODA records related in any way to this Agreement are subject, at all reasonable times, to inspection, review, copying, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this contract. At the City's request, ODA shall conduct an audit of the records relating to this contract at ODA's own expense.

B. A record owned, used, or retained by the City is a "public record" pursuant to RCW 42.56.010 and is subject to disclosure upon request under Washington's Public Records Act, even if such record is in ODA's sole possession. Should the City request that ODA provide the City with a record that the City, in its sole discretion, deems to be a public record, so that it may be produced in response to a public records request, and should ODA fail to provide such record to the City within 10 days of the City's request for such record, ODA shall indemnify, defend, and hold the City harmless for any public records judgment, including costs and attorney's fees, against the City involving such withheld record.

7. Special Safeguards.

ODA, at all times, shall take reasonable measures to anticipate any special problems which might arise in relation to ODA's activities which involve a degree of risk to any participant in ODA's programming. ODA will assure reasonable safeguards with respect to equipment, procedures, and specially trained staff.

8. Assignment/Subcontracting.

A. ODA may not assign any portion of this contract except with the express written permission of City.

B. City may inspect any subcontract document prior to execution. Subcontracts must contain the same insurance and indemnification requirements to protect City from liability.

9. Future Support.

City makes no commitment to future support and assumes no obligations for future support of the activity contracted for in this contract, except as expressly set forth in this contract.

10. Compliance with Laws.

ODA, in performance of this contract, shall comply with all applicable federal, state, and local laws and ordinances, including standards for licensing, certification, and operation of facilities, program and accreditation, and licensing of individuals, and any other standards or criteria as described in this contract to assure quality of service.

11. Changes and Modifications.

Any amendment to this contract must be in writing and signed by both parties.

12. Non-Discrimination in Employment.

ODA shall not unlawfully discriminate against any employee, volunteer, applicant, or client based on any legally protected class status including, but not limited to: race, color, creed, religion, national origin, age, sex, marital status, veteran status, gender identity, sexual orientation, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position.

13. Compliance with Nondiscrimination Requirement.

In the event of ODA's noncompliance or refusal to comply with the above discrimination prohibition, this contract may be rescinded, canceled, or terminated in whole or in part, and ODA may be declared ineligible for further contracts with City. City will, however, give ODA a reasonable time in which to correct this noncompliance.

To assist City in determining compliance, ODA shall complete and return the *Statement of Compliance with Non-Discrimination Requirement* attached as **Exhibit B**. If the contract is \$50,000 or more, ODA shall execute the attached Equal Benefits Declaration – **Exhibit D**.

14. Relationship of the Parties.

The parties intend that an independent contractor relationship is created by this contract. City is interested primarily in the results to be achieved; the implementation of services lies solely with ODA. No agent, employee, volunteer, or representative of ODA may be deemed to be an employee, agent, servant, or representative of City for any purpose, and the employees of ODA are not entitled to any of the benefits City provides for City employees.

ODA is solely and entirely responsible for its acts and for the acts of its agents, employees, servants, representatives, subcontractors, or otherwise during the performance of this contract.

15. Political Activity Prohibited.

None of the funds, materials, property, or services provided directly or indirectly under this contract may be used for any partisan political activity, or to further the election or defeat of any candidate for public office or ballot measure.

16. Hold Harmless/Indemnification.

ODA shall defend, indemnify, and hold City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors, or omissions of ODA in performance of this contract, except for injuries and damages caused by the sole negligence of City.

However, should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of ODA and City,

its officers, officials, employees, and volunteers, ODA's liability, including the duty and cost to defend, hereunder is only to the extent of ODA's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes ODA's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section survive the expiration or termination of this contract.

17. Insurance.

A. Insurance Term

ODA shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the Services by ODA, its agents, representatives, volunteers, or employees.

B. No Limitation

ODA's maintenance of insurance as required by the contract may not be construed to limit the liability of ODA to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

ODA shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage must be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance must be at least as broad as ISO occurrence form CG 00 01 and must cover liability arising from premises, operations, stop-gap, independent contractors, personal injury, and advertising injury. City must be named as an additional insured under ODA's Commercial General Liability insurance policy with respect to the work performed for City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to ODA's profession.

D. Minimum Amounts of Insurance

ODA shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance must be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance must be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.
4. Other Insurance Provision

ODA's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they are primary insurance as respects City. Any insurance, self-insurance, or self-insured pool coverage maintained by City is excess of ODA's insurance and does not contribute with it.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. Verification of Coverage

ODA shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the contract before commencement of the work.

G. Notice of Cancellation

ODA shall provide City with written notice of any policy cancellation within two business days of their receipt of such notice.

H. Failure to Maintain Insurance

Failure on the part of ODA to maintain the insurance as required constitutes a material breach of contract, upon which City may, after giving five business days' notice to ODA to correct the breach, immediately terminate this contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand, or at the sole discretion of City, offset against funds due ODA from City.

I. City Full Availability of ODA Limits

If ODA maintains higher insurance limits than the minimums shown above, City is insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by ODA, irrespective of whether such limits maintained by ODA are greater than those required by this contract or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by ODA.

18. Failure to Comply with Contract Requirements: Suspension, Termination, and Close Out.

Failure to comply with any of the provisions of this contract constitutes material breach of contract and cause for termination. Time is of the essence in the performance of this contract.

If ODA fails to comply with the terms and conditions of this contract, City may pursue such remedies as are legally available including, but not limited to, hold back of payment and the suspension or termination of this contract.

A. Termination for Cause. If ODA fails to comply with the terms of this contract and any of the following conditions exist:

1. The lack of compliance with the provisions of this contract are of such scope and nature that City deems continuation of this contract to be substantially detrimental to the interest of City;
2. ODA has failed to take satisfactory action as directed by City or its authorized representative within the time specified;
3. ODA has failed within the time specified by City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract;

then City may terminate this contract in whole or in part, and shall notify ODA of the termination, the reasons for the termination, and the effective date of the termination, but the effective date may not be prior to notification to ODA. After the effective date of the termination, no charges incurred under any terminated portions are allowable.

B. Termination for Other Grounds. This contract may also be terminated in whole or in part:

1. By the mutual agreement of the parties, in which case the termination must be in writing, signed by both parties, and must include the conditions for termination, the effective date, and in the case of termination in part, that portion of the contract to be terminated. After the effective date of the termination, no charges incurred under any terminated portions are allowable.
2. If the funds allocated by City under this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services, City may summarily terminate this contract as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provision of this contract. Termination under this paragraph is effective on the date specified in the written notice of termination sent by City to ODA. After the effective date of the termination, no charges incurred under this contract are allowable.

19. Jurisdiction.

- A. This contract is made in and governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action related to this contract must be instituted and maintained only in the Superior Court for Thurston County, State of Washington.

20. Severability.

- A. If any part, term, or provision of this contract is held by a court to be illegal, the validity of the remaining provisions is not affected, and the rights and obligations of the parties must be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- B. If any provision of this contract is in conflict with any Washington statute, the conflicting provision must be deemed inoperative and null and void insofar as it may be in conflict, and must be deemed modified to conform to such statute.

21. Entire Contract.

This contract is the complete expression of the terms related to the Services and any oral representations or understandings not contained in this contract are excluded.

22. Counterparts.

This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, or an electronic or digital signature where permitted by law, must be deemed to be an original signature for all purposes. All executed counterparts of this Agreement

are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

23. Waiver of Contract Terms.

The forgiveness of the nonperformance of any provision of this contract does not constitute a waiver of the provisions of this contract.

24. Contract Manager

Each party to this contract shall have a contract manager. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

OLYMPIA DOWNTOWN ASSOCIATION (ODA)

Todd Cutts
Executive Director
120 State Ave NE #1031
Olympia WA 98501
360.489.0886
tcutts@downtownolympia.org

CITY OF OLYMPIA

Mike Reid
Economic Development Director
PO Box 1967
Olympia WA 98507-1967
360.753.8591
mreid@ci.olympia.wa.us

25. Ratification.

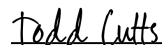
Any work performed prior to the effective date that falls within the scope of this contract and is consistent with its terms is hereby ratified and confirmed.

26. Debarment. ODA certifies, by signing this contract, that neither it nor its principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

I hereby certify that I am authorized to bind the entity for which I am signing below.

OLYMPIA DOWNTOWN ASSOCIATION

CITY OF OLYMPIA



Todd Cutts, Executive Director
tcutts@downtownolympia.org

Steven J. Burney, City Manager
jburney@ci.olympia.wa.us

07/12/2024

Date signed

Date Signed

APPROVED AS TO FORM BY:

Mark Barber

City Attorney

Exhibit “A”
DOWNTOWN VIBRANCY FUNDING PACKAGE
SCOPE OF SERVICES

Background

The Olympia Downtown Alliance is excited to continue to partner with the City of Olympia to support a welcoming and vibrant downtown.

Scope Of Services

Downtown Guide Program Funding - The City is currently contracted with the Olympia Downtown Alliance to assist in funding expansion of Downtown Guide services through August 2024. Extending this partnership would provide funding for the program through December 2025, while leveraging matching private sector funding for the program. These services, similar to the former Downtown Ambassador program, focus on supporting a welcoming environment downtown. Funding would include 4 Guides (including an Operations Supervisor) during this timeframe.

- Total program cost: \$285,000
- Private sector funding: \$140,000
- City funding (net of private sector): \$145,000 – City will Reimburse the Olympia Downtown Alliance at the billable rates listed below.

Maintenance Worker (2025) - The Downtown Maintenance Worker helps to keep downtown feeling clean and welcoming. In 2024, the PBA is funding a full-time position that will also assist in watering hanging baskets. The intent of this request would be to add to this resource in 2025.

- City funding: \$55,000 - City will reimburse the Olympia Downtown Alliance at the billable rates listed below.

Graffiti abatement program (2025) - This program is intended to eradicate graffiti tags from downtown property. The Alliance has a contract to do so with the City for 2024. The program collaborates with the Clean Team to reach tags that are above their reach on the second floor of downtown buildings.

- City funding: \$25,000 in 2025 - City will reimburse Olympia Downtown Alliance for costs of contractor.
*Funded by General fund in 2024

Tree lights - This popular program was initiated, through contract funding with the City in 2020. It installs lights in trees downtown during the “dark” season (October-April) and is currently unfunded starting October 2024.

- City funding: \$30,000/year for two years = \$60K total in 2024-25 - City will reimburse Olympia Downtown Alliance for cost of contractor.

Executive Director	\$	63.85/hour
Operations Supervisor	\$	31.30/hour
Guide	\$	26.10/hour
Maintenance Worker	\$	26.10/hour

TOTAL CITY FUNDING - \$285,000 (2024-25)

Exhibit "B"
STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Listed below are methods to ensure that this policy is communicated to your employees, if applicable.

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.

Failure to implement at least two of the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance by the use of at least two of the measures specified above.

(Signature)

(Date)

Todd Cutts, Executive Director

Print Name of Person Signing

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

(Sole Proprietor Signature)

(Date)

**Exhibit "C"
City of Olympia
INVOICE**

E-MAIL INVOICE TO
dsimmons@ci.olympia.wa.us

Agency: Olympia Downtown Association
120 State Ave NE #1031
Olympia WA 98501

Invoice Amount: _____
Invoice Number: _____
Invoice Date: _____

Signature: _____
Title: _____

Printed Name: _____

Services Rendered:

Description of Itemized Services	Amount
Invoice Total:	\$

Invoice Requirements

Please provide an itemization of services provided and/or a brief description of work completed for this invoice period. Attach to this invoice copies of invoices, proof of payment (cancelled checks, receipts or other payment documentation acceptable to the City). When seeking reimbursement for a product, such as a brochure, poster, radio spot, print job, promotional item, etc., attach a copy of the product if it is no larger than 8.5" by 11". For radio spots, include a copy of the script. For videography, provide a copy of the end product. For promotional items or items larger than standard paper, shrink to fit oversize pages to standard paper size, or attach a proof or photo of the item. Do not send actual promotional items such as buttons, shirts, caps, frisbees, etc

Exhibit "D"
EQUAL BENEFITS COMPLIANCE DECLARATION

Contractors or consultants on City agreements or contracts estimated to cost \$50,000 or more shall comply with Olympia Municipal Code, Chapter 3.18. This provision requires that if contractors or consultants provide benefits, they do so without discrimination based on age, sex, race, creed, color, sexual orientation, national origin, or the presence of any physical, mental or sensory disability, or because of any other status protected from discrimination by law. Contractors or consultants must have policies in place prohibiting such discrimination, prior to contracting with the City.

I declare that the Consultant listed below complies with the City of Olympia Equal Benefits Ordinance, that the information provided on this form is true and correct, and that I am legally authorized to bind the Consultant.

Olympia Downtown Association

By _____
Todd Cutts, Executive Director

Date _____