TOURISM SERVICE CONTRACT

Lodging Tax Contract: Water Music Festival Society

Contract Reference: TDF106:WMFS2014

THIS AGREEMENT is made by and between the Water Music Festival Society, P O Box 523, Seaview, Washington 98644. ("the ORGANIZATION"), and the Board of Pacific County Commissioners ("the BOARD") on behalf of Pacific County ("the COUNTY"), a political subdivision and municipal corporation of the state of Washington.

WHEREAS, Chapter 67.28 RCW provides authority for legislative bodies of municipalities to impose excise taxes on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapter 82.08 RCW; and

WHEREAS, the BOARD, the legislative body of and for the COUNTY, by enacting Ordinance No. 143 – Lodging Tax imposed the excise taxes authorized in Chapter 67.28 RCW; and

WHEREAS, RCW 67.28.1815 in part states that: **"All revenue from taxes imposed under said Chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities…"** and

WHEREAS, the COUNTY Lodging Tax revenues have been credited to the Tourism Development Fund (No. 106) in the treasury of the COUNTY; and

WHEREAS, the ORGANIZATION applied through the Pacific County Lodging Tax Advisory Committee ("the LTAC") for financial assistance from COUNTY Lodging Tax proceeds ("the Proposal); and

WHEREAS, the LTAC facilitated these efforts by (a) developing the application forms and procedures, (b) coordinating the funding availability advertising, (c) evaluating submitted application packets, and (d) advancing the financing award recommendations to the BOARD, including the Proposal from the ORGANIZATION; and

WHEREAS, the BOARD has determined that the activity herein described promotes the general welfare, health and safety of the citizens of the COUNTY, and is in the best interests of the COUNTY in regard to the promotion of tourism in Pacific County, the BOARD intends to disperse COUNTY Lodging Tax proceeds to the ORGANIZATION to assist with its Proposal, and hereby enters into this Agreement; now, therefore,

WITNESSETH, that in consideration of the premises and mutual benefits and covenants herein contained, it is agreed by and between the parties hereto as follows:

1. **FUNDING**: One Thousand Eight Hundred Dollars ($2,000) have been pledged from the COUNTY Tourism Development Fund No. 106 in fiscal year 2014 to assist with **Tourism Promotion** within Pacific County. Said amount shall constitute the maximum reimbursement the ORGANIZATION is eligible to receive from the COUNTY under this Agreement.

2. **USE OF FUNDS**: The ORGANIZATION shall use these COUNTY funds for the express purpose of **Tourism Promotion** of Pacific County. **Tourism Promotion** is defined as activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; providing information and/or services to inform and/or recruit prospective tourists; and funding marketing of special events and festivals designed to attract tourists. The specific services to be provided by the ORGANIZATION to the COUNTY under this Contract are described in Attachment A: Scope of Work.

3. **PAYMENT PROVISIONS**: Once this AGREEMENT is executed, the ORGANIZATION may submit claims vouchers to the COUNTY requesting reimbursement for eligible expenses and/or for eligible services as listed in Section 2. Use of Funds and Attachment A: Scope of Work up to the amount as specified in Section 1. Funding.

Each reimbursement claims voucher shall include the following certificate of authenticity with the dated signature of an authorized representative of the ORGANIZATION: ***"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished and the services rendered as described herein, and that this claim is a just, due and unpaid obligation against the Pacific County Tourism Development Fund No. 106."***

The ORGANIZATION shall provide the COUNTY with a written "progress/status brief" regarding the Proposal with each reimbursement claims voucher.

Within twenty (20) days of receiving any such reimbursement claims voucher, the COUNTY shall remit to the ORGANIZATION a warrant for the approved reimbursement amount.

The final claims voucher shall be submitted to the County by the ORGANIZATION no later than Friday, January 2, 2015.

4. **EVALUATION AND MONITORING**: The ORGANIZATION agrees to maintain books, records and other documents and evidence, and to use accounting procedures and practices that sufficiently and properly support the complete performance of and the full compliance with this Agreement. The ORGANIZATION will retain these supporting books, records, documents and other materials for at least three (3) calendar years following the year in which the Agreement expires.

The COUNTY and/or the State Auditor and any of their representatives shall have full and complete access to these books, records and other documents and evidence retained by the ORGANIZATION respecting all matters covered in and under this Agreement, and shall have the right to examine such during normal business hours as often as the COUNTY and/or the State Auditor may deem necessary. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, and records of matters covered by this Agreement. These access and examination rights shall last for three calendar years following the year in which the Agreement expires.

The COUNTY intends without guarantee for its agents to use reasonable security procedures and protections to assure that related records and documents provided by the ORGANIZATION are not erroneously disclosed to third parties. The COUNTY will, however, disclose or make this material available to those authorized by/in the above paragraph or permitted under the provisions of Chapter 42.56 RCW without notice to the ORGANIZATION.

The ORGANIZATION shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this Agreement that the COUNTY finds needing to be conducted.

5. **RECAPTURE PROVISION**: In the event the ORGANIZATION fails to expend these funds in accordance with state law and/or the provisions of this Agreement, the COUNTY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for a period of two (2) years following release of any report from an audit conducted by the COUNTY and/or the State Auditor's Office under the Section 4 (EVALUATION AND MONITORING) provisions or the 3-year records retention period required under Section 4 (EVALUATION AND MONITORING), whichever occurs later. Repayment by the ORGANIZATION of any funds recaptured under this provision shall occur within twenty (20) days of any demand. In the event the COUNTY is required to institute legal proceedings to enforce this recapture provision, the COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.

6. **NONDISCRIMINATION**: The ORGANIZATION shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA). In the event the ORGANIZATION fails or refuses to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the ORGANIZATION may be declared by the COUNTY ineligible for further Pacific County Tourism Development Funds. The ORGANIZATION shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedures set forth herein.

7. **EMPLOYMENT RELATIONSHIPS**: The ORGANIZATION, its employees, volunteers or agents performing under this Agreement are not deemed to be employees of the COUNTY, nor volunteers or agents of the COUNTY in any manner whatsoever. No officer, employee, volunteer or agent of the ORGANIZATION will hold themselves out as, or claim to be, an officer, employee, volunteer or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee volunteer or agent of the COUNTY.

The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this Agreement for any ORGANIZATION employee or volunteer, or for any consultant's, contractor's or subcontractor's employee(s) or agent(s) that has been retained by the ORGANIZATION.

8. **HOLD HARMLESS**: In accepting this Agreement, the ORGANIZATION, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the ORGANIZATION or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the ORGANIZATION, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

9. **ENTIRE AGREEMENT/MODIFICATIONS**: This Agreement represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto. The COUNTY and the ORGANIZATION may, from time to time, request changes in services being performed with these funds. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this Agreement. For example, and without limitation, an amendment to this Agreement must be approved in writing by the COUNTY prior to the ORGANIZATION expending funds for the items covered within that amendment. Costs incurred in contravention of this Paragraph are the sole responsibility of the ORGANIZATION.

10. **AGREEMENT PERIOD**: The terms of this Agreement and the performance of the parties hereto shall commence, or be deemed to have commenced, the 1st day of January 2014 and will continue through the 31st day of December 2014, both dates inclusive, unless sooner terminated or extended as provided for herein.

11. **TERMINATION OF AGREEMENT**: If, through any cause, the ORGANIZATION shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the ORGANIZATION shall violate any of its covenants, agreements or stipulations, the COUNTY shall thereupon have the right to terminate this Agreement and withhold the remaining allocation if the default or violation is not corrected within ten (10) days of the COUNTY submitting written notice to the ORGANIZATION describing the default or violation.

Notwithstanding any contrary provisions of this Agreement, either party may terminate this Agreement by providing written notice of such termination and specifying the effective date thereof to the other party at least twenty (20) days prior to the revised termination date. Payment for all Proposal-related expenses incurred by the ORGANIZATION and not reimbursed or otherwise paid for by the COUNTY prior to the effective date of such revised termination shall be as the COUNTY reasonably determines.

The COUNTY may unilaterally terminate all or part of this Agreement, or reduce the Scope of Work and/or Funding without regard for "eligible" expenses being incurred and awaiting reimbursement if the Pacific County Tourism Development funds are reduced as a result of a reduction or loss of the lodging sales and use taxing authority or a substantial reduction in taxable jurisdiction or activity.

12. **SPECIAL PROVISION**: The failure of the COUNTY to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

13. **SEVERABILITY**: In the event any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, then said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this Agreement shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

14. **DISPUTE RESOLUTION**: Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute by majority vote. The team shall consist of (a) a representative appointed by the COUNTY, (b) a representative appointed by the ORGANIZATION, and (c) a third party mutually agreed upon by the two (2) appointed representatives. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

15. **GOVERNING LAW AND VENUE**: This Agreement shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The Superior Court of and for Pacific County, Washington shall be the venue for any suit between the parties arising out of this Agreement.

16. **NOTIFICATION**: Should the need arise during the term of this Agreement for either party to notify the other of a change in address or otherwise, the following contacts shall be used:

For the COUNTY:

Clerk of the Board of Pacific County Commissioners
P.O. Box 187
South Bend, WA 98586-0187
Telephone: 360/875-9337
Fax: 360/875-9337

For the ORGANIZATION:

Judy Beezley, Treasurer
Water Music Festival Society
P.O. Box 524
Seaview, WA 98644
Telephone: 360/665-4466
Fax: 360/665-5031
Tax ID #91-1296224

IN WITNESS WHEREOF legal representatives of both the ORGANIZATION and the COUNTY have executed this Agreement on the date(s) so noted below.

ORGANIZATION
Water Music Festival Society

Print Name Title

Signature Date

ATTEST:

Print Name Title

Signature Date

APPROVED AS TO FORM:

David Burke
Pacific County Prosecuting Attorney

Signature Date

Board of County Commissioners
Pacific County, Washington

Lisa Ayers, Chair

Steve Rogers, Commissioner

Frank Wolfe, Commissioner

ATTEST:

Clerk of the Board Date

ATTACHMENT A: SCOPE OF WORK

2014 Promotion of Water Music Festival event(s) to Potential Tourists Residing Out of Area (outside Pacific County):

Activity:	Number of Unduplicated Contacts/Actions	Budget
Brochures Produced/Printed	3,000	$1,600
Brochures Mailed/Distributed	3,000	$ 400
	Total:	$2,000