TOURISM SERVICE CONTRACT

Lodging Tax Contract: Ilwaco Charter Association

Contract Reference: TDF106:ICA2017

THIS AGREEMENT is made by and between the Ilwaco Charter Association, P O Box 9, Ilwaco, Washington 98624. ("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 Nine Hundred Dollars ($1,900) have been pledged from the COUNTY Tourism Development Fund No. 106 in fiscal year 2017 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.

DRAFT

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 under the laws of the State of Washington 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. Signed this __day of (insert month and year) at (insert name of city), Washington."***

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 Monday, December 15, 2017. Any invoices submitted after this date will not be paid.

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.

DRAFT

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**: To the fullest extent permitted by law, the ORGANIZATION agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the ORGANIZATION, its employees, agents or volunteers or ORGANIZATION's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the ORGANIZATION'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the ORGANIZATION shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the ORGANIZATION shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the ORGANIZATION hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the ORGANIZATION are a material inducement to COUNTY to enter into the Contract, are reflected in the ORGANIZATION's compensation, and have been mutually negotiated by the parties.

DRAFT

9. **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 2017 and will continue through the 31st day of December 2017, both dates inclusive, unless sooner terminated or extended as provided for herein.

10. **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.

11. **DISPUTE RESOLUTION**: Differences between the ORGANIZATION and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due ORGANIZATION shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive.

12. **GOVERNING LAW AND VENUE**: If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Contract shall be filed in the Pacific County Superior Court. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

13. **SEVERABILITY**: If a court of competent jurisdiction holds any part, term or provision of this Contract 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 Contract did not contain the particular provision held to be invalid. If any provision of this Contract 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. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

14. **PUBLIC RECORDS ACT**: This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the ORGANIZATION are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the ORGANIZATION agrees to make them promptly available to the

COUNTY. If the ORGANIZATION considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the ORGANIZATION shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the ORGANIZATION and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the ORGANIZATION (a) of the request and (b) of the date that such information will be released to the requester unless the ORGANIZATION obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the ORGANIZATION fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified. The COUNTY has, and by this section assumes, no obligation on behalf of the ORGANIZATION to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the ORGANIZATION for releasing records not clearly identified by the ORGANIZATION as confidential or proprietary. The COUNTY shall not be liable to the ORGANIZATION for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction. The ORGANIZATION agrees to hold harmless and indemnify the COUNTY for any third-party claims against the COUNTY for the ORGANIZATION'S failure to notify third-parties of a public record release or to obtain an injunction prohibiting public release of documents.

15. **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.

16. **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.

17. **REQUIRED REPORTING:** Pursuant to RCW 67.28.1816(2)(c)(i): All recipients must submit a report to the COUNTY describing the actual number of people traveling for business or pleasure on a trip:

(A) Away from their place of residence or business and staying overnight in paid accommodations;
(B) To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or
(C) From another country or state outside of their place of residence or their business.

The ORGANIZATION is also required to submit a final actual expenditure report by December 15, 2017 with the final voucher to receive full payment.

DRAFT

18. **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: 360/875-9335

For the ORGANIZATION: Mike Cassinelli
P.O. Box 9
Ilwaco, WA 98624
Telephone: 360/642-2138 or 503/970-1284
Fax:
Tax ID #47-4738155

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

DRAFT

ORGANIZATION
Ilwaco Charter Association

_____
Print Name Title

_____
Signature Date

ATTEST:

_____
Print Name Title

_____
Signature Date

Board of County Commissioners
Pacific County, Washington

_____
Chair

_____
Commissioner

_____
Commissioner

ATTEST:

_____
Clerk of the Board Date

ATTACHMENT A: SCOPE OF WORK

2017 Promotion of the Pacific County area and/or Events/Attractions in Pacific County to Potential Tourists:

Activity:	Number of Unduplicated Contacts/Actions	Budget
Operation of Tourism Funded Facility Costs	8,621.30	$1,900.00
	Total:	$1,900

DRAFT