

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *CHILDREN'S MUSEUM OF SKAGIT COUNTY* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2018 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2018 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2018 through December 31, 2018.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is providing funding for the construction of the expanded Children's Museum of Skagit County being relocated to the Outlet Shoppes at Burlington. Eligible costs include those associated with permitting, architectural design and project related professional services, construction and contractor costs, and supplies and materials. The Children's Museum will function as a satellite Visitor's Information Center (VIC) cooperatively operated by the City of Burlington and the Children's Museum of Skagit County. The Outlet Shoppes at Burlington and the Children's Museum of Skagit County serve as frequent introductory points for tourists and visitors to discover Burlington and Skagit County. As such, the satellite VIC will serve as an information source for tourists interested in exploring Burlington and Skagit County and will provide space for display and distribution of Burlington and Skagit County marketing materials. VIC operations will include both display and distribution of written tourism related materials and an interactive web based computer station for children and their families to explore tourism opportunities. The project will include designing and developing a larger museum space with new and updated exhibits, the satellite VIC, and an approximate 3,000 square foot event center that will be used for tourism related events and programs for the museum, the City, and other community and tourism related organizations.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$150,000 from 2018 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2018 fiscal year will be noon the first Friday of January, 2019.
- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
- i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;

- (b) Article 8, Section 7 of the Washington State Constitution;
- (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.
- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2019 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2019.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive

Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**CHILDREN'S MUSEUM OF
SKAGIT COUNTY**

By _____
STEVE SEXTON, Mayor

By _____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2018 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2019

1. Organization: Children's Museum of Skagit County

2. This report covers:
Event/Activity Name: Facility Relcocation
Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 150,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:
 1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
 2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
 3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____

(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____	Locally booked
_____	Booked by “tourists” (more than 50 miles away)
_____	TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *CHILDREN'S MUSEUM OF SKAGIT COUNTY* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2020 through December 31, 2020.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing the Skagit County Children's Museum to potential visitors/tourists traveling for business or pleasure via traditional print media, rack cards, social media campaigns, the museum website, mailers, radio advertisements, and related marketing strategies. Operate a satellite Burlington Visitor's Information Center in cooperation with the City of Burlington to market to potential visitors/tourists traveling for business or pleasure (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; and/or (c) from another country or state outside of their place of residence or their business. The operation of the satellite Burlington Visitor's Information Center will include the display and distribution of written materials, upkeep of tourism related information on the museum website, and an interactive web based computer station for children and their families to explore tourism opportunities throughout Skagit County.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$35,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or

state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.

- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.
- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;

- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

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If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

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ATTN: City Administrator
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(360) 755-0531

With copies to the City Attorney.

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Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**CHILDREN'S MUSEUM OF
SKAGIT COUNTY**

By _____
STEVE SEXTON, Mayor

By _____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Children's Museum of Skagit County
2. This report covers:
Event/Activity Name: Marketing and/or operations of the Children's Museum of Skagit County to potential tourists residing more than 50 miles from Burlington.
Dates: _____
3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 35,000
4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total
5. Estimated total attendance for event or activity:
 1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
 2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
 3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)
6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)
7. Number of conferences/weddings/conventions/etc.

_____	Locally booked
_____	Booked by “tourists” (more than 50 miles away)
_____	TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *CHILDREN'S MUSEUM OF SKAGIT COUNTY* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing and/or operations of the Children's Museum of Skagit County 3rd Annual Winter Wonderland event in December 2019 to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County Winter Wonderland 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$50,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2019 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2019.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**CHILDREN'S MUSEUM OF
SKAGIT COUNTY**

By _____
STEVE SEXTON, Mayor

By _____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2019

1. Organization: Children’s Museum of Skagit County

2. This report covers:

Event/Activity Name: Marketing and/or operations for the 3rd Annual Children’s Museum of Skagit County Winter Wonderland Festival to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 50,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by “tourists” (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *CHILDREN'S MUSEUM OF SKAGIT COUNTY* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with development of a Skagit County Museum Passport with the intention of marketing Skagit County museums to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County/Skagit County Museum Passport City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$3,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**CHILDREN'S MUSEUM OF
SKAGIT COUNTY**

By _____
STEVE SEXTON, Mayor

By _____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Children’s Museum of Skagit County

2. This report covers:

Event/Activity Name: Marketing and/or operations for the Children’s Museum of Skagit County, Skagit County Museum Passport to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 3,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)tal

5. Estimated total attendance for event or activity:

- 1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
- 2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
- 3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____

(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by “tourists” (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *CELTIC ARTS FOUNDATION* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with direct marketing of the Skagit Valley Highland Games and Celtic Festival to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Celtic Arts Foundation website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Celtic Arts Foundation 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$7,500 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.
- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
- i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.
- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials

and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Skye Richendrfer, Executive Director
Celtic Arts Foundation
PO Box 1342
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th of November, 2018.

CITY OF BURLINGTON

CELTIC ARTS FOUNDATION

By _____
STEVE SEXTON, Mayor

By _____
Skye Richendrfer, Executive Director
Tax ID 91-1878785

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Celtic Arts Foundation

2. This report covers:

Event/Activity Name: Marketing for the 2019 Skagit Valley Highland Games and Celtic Festival to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 7,500

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *SKAGIT VALLEY TULIP FESTIVAL* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2020.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with the printing, marketing and distribution of the 2019 Official Skagit Valley Tulip Festival Brochure to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Skagit Valley Tulip Festival website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

All written advertising materials funded under this agreement shall include a listing of Burlington hotels in the handwritten material. Alternatively, an agency funded by Burlington Lodging Tax Funds may provide a direct link to Burlington hotels from its agencies webpage.

The Skagit Valley Tulip Festival 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$6,500 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation

for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as

Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including

death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cindy Verge, Executive Director
Skagit Valley Tulip Festival
PO Box 1784
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

SKAGIT VALLEY TULIP FESTIVAL

By _____
STEVE SEXTON, Mayor

By _____
Cindy Verge, Executive Director
Tax ID 91-1662982

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Skagit Valley Tulip Festival
2. This report covers:

Event/Activity Name: Marketing for the 2019 Skagit Valley Tulip Festival to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 6,500

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____

(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *BURLINGTON CHAMBER OF COMMERCE* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with Berry Dairy Days Festival to develop marketing materials to promote the 2019 Berry Dairy Days Festival to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Burlington Chamber of Commerce website, and any brochures or print media paid for with these funds, must include a listing of and a link to Burlington lodging establishments; this link must be a direct lead to a listing of lodging establishments within one click. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Burlington Chamber of Commerce 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$16,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Peter Browning, President/CEO
Burlington Chamber of Commerce
PO Box 1087
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**BURLINGTON CHAMBER OF
COMMERCE**

By _____
STEVE SEXTON, Mayor

By _____
Peter Browning, President/CEO
Tax ID 91-1019001

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2019

1. Organization: Burlington Chamber of Commerce

2. This report covers:

Event/Activity Name: Berry Dairy Days Festival marketing to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$16,000.00

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 20th day of November, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *BURLINGTON CHAMBER OF COMMERCE* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with operation of the Burlington Visitor's Center located at 520 E Fairhaven Avenue, Burlington, WA, promotion of tourism in the City of Burlington and Skagit County by staffing and operating the Burlington Visitor's Center and maintaining the tourism website, www.visitburlingtonwa.gov; the development and distribution of marketing materials that promote Burlington and Skagit County events and activities to tourists using numerous marketing platforms and approaches. The implementation marketing strategies to potential visitors/tourists traveling either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Burlington Chamber of Commerce website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Burlington Chamber of Commerce 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$125,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for

clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3.

Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
 - g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
 - h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.
4. REPORTS AND INFORMATION:
- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
 - b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;

- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given

effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Peter Browning, President/CEO
Burlington Chamber of Commerce
PO Box 1087
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 22nd day of November, 2018.

CITY OF BURLINGTON

**BURLINGTON CHAMBER OF
COMMERCE**

By _____
STEVE SEXTON, Mayor

By _____
Peter Browning, President/CEO
Tax ID 91-1019001

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Burlington Chamber of Commerce

2. This report covers:

Event/Activity Name: Operations of the Burlington Visitor's Information Center and marketing and operation of special events to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 125,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
_____ Locally booked

Booked by "tourists" (more than 50 miles away)
TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *LINCOLN THEATRE CENTER FOUNDATION* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of Lincoln Theatre events to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Lincoln Theatre website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Lincoln Theatre Center Foundation 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$8,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Roger Gietzen, Executive Director
Lincoln Theatre Center Foundation
PO Box 2312
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**LINCOLN THEATRE CENTER
FOUNDATION**

By _____
STEVE SEXTON, Mayor

By _____
Roger Gietzen, Executive Director
Tax ID 94-3052481

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Lincoln Theatre Center Foundation

2. This report covers:

Event/Activity Name: Expanding marketing for Lincoln Theatre live performances to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 8,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *MCINTYRE HALL PERFORMING ARTS CENTER / SKAGIT VALLEY COLLEGE* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of the McIntyre Hall concerts, events and venue to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include regional and statewide promotion of the events and of McIntyre Hall as a rental venue for weddings, reunions, receptions, conferences, meetings, etc. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The McIntyre Hall website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The McIntyre Hall's 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$16,000 from 2019 fiscal year Lodging tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Nida Tautvydas, Executive Director
McIntyre Hall Performing Arts Center
2501 East College Way
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November , 2018.

CITY OF BURLINGTON

**MCINTYRE HALL PERFORMING
ARTS CENTER**

By _____
STEVE SEXTON, Mayor

By _____
Nida Tautvydas, Executive Director
Tax ID 91-0822539

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: McIntyre Hall and Performing Arts Center

2. This report covers:

Event/Activity Name: Marketing of the McIntyre Hall concerts, events and venue to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 16,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *SKAGIT RIVER BALD EAGLE AWARENESS TEAM* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with staffing and operating the Skagit River Bald Eagle Festival and Interpretive Center to potential visitors / tourists traveling for business or pleasure either in support of the Skagit River Bald Eagle Festival and marketing materials to in a wide variety of formats (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; and/or (c) from another country or state outside of their place of residence or their business. Please note, Burlington Lodging Tax Funds are not to be used to enhance agency fund balances, and are specifically limited to reimbursing allowable costs associated with operating the interpretive center and marketing the festival.

The Skagit River Bald Eagle Festival / Skagit River Bald Eagle Interpretive Center website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

All written advertising materials funded under this agreement shall include a listing of Burlington hotels in the handwritten material. Alternatively, an agency funded by Burlington Lodging Tax Funds may provide a direct link to Burlington hotels from its agencies webpage.

The Skagit River Bald Eagle Awareness Team 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$5,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City

Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill,

along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2019 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments,

settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Judy Hemenway, Treasurer
Skagit River Bald Eagle Awareness Team
PO Box 571
Concrete, WA 98237

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November , 2018.

CITY OF BURLINGTON

**SKAGIT RIVER BALD EAGLE
AWARENESS TEAM**

By _____
STEVE SEXTON, Mayor

By _____
Judy Hemenway, Treasurer
Tax ID 94-3147213

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Skagit River Bald Eagle Awareness Team

2. This report covers:

Event/Activity Name: Marketing for the Skagit River Bald Eagle Festival and Interpretive Center to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 5,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *SKAGIT RIVER SALMON FESTIVAL* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2019.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of the Skagit River Salmon Festival to potential visitors / tourists traveling for business or pleasure either (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; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Skagit River Salmon Festival website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Skagit River Salmon Festival 2019 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$5,000 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;
 - Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2019 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party

shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Kevin Tate, Festival Board President
Skagit River Salmon Festival
PO Box 1011
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with

the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November 2018.

CITY OF BURLINGTON

**SKAGIT RIVER SALMON
FESTIVAL**

By _____
STEVE SEXTON, Mayor

By _____
KEVIN TATE, Festival Board
President
Tax ID 45-5490813

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** **A.** 2019 Lodging Tax Grant Application
 B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Skagit River Salmon Festival

2. This report covers:

Event/Activity Name: Marketing for the Skagit River Salmon Festival 2019 to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 5,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of December, 2018, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City") and the *PACIFIC PREMIER FC DBA WASHINGTON RUSH* (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2019 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2019 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2019 through December 31, 2020.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with operating and marketing the expanded four day 2019 Rush Cup soccer tournament in Burlington to potential new participants and tourist traveling either (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; and/or (c) from another country or state outside of their place of residence or their business. Eligible operation expenses for the expanded tournament will include traffic flagging staff and tournament staff. Eligible marketing costs include development of a professional promotional video aimed at out of state teams, advertising the Rush Cup in soccer tournament websites, and bulk mailing to potential visitors and/or team participants out of the area.

The Pacific Premier FC DBA Washington Rush website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Pacific Premier FC DBA Washington Rush City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

- a. The City grants to the Recipient the sum of \$20,200 from 2019 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.
- b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for

payment of funds for the 2019 fiscal year will be noon the first Friday of January, 2020.

- c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. 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; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.
- d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:
 - i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;
 - ii. To fund activities that target the generation of business for any single specific private business entity;
 - iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;
 - iv. For cash bonuses or gifts; and/or
 - v. For any purpose that would violate the following as the same exist now or may be hereafter amended:
 - (a) RCW 67.28.1815;
 - (b) Article 8, Section 7 of the Washington State Constitution;
 - (c) For any specific expense that would otherwise be prohibited from payment by the City.
- e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted

to the City by the first Wednesday of the month for payment during that month.

- f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.
- g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.
- h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

- a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.
- b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:
 - Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
 - Estimated number of persons remaining at the destination overnight in paid accommodations;
 - Estimated number of persons remaining at the destination in unpaid accommodations;
 - Estimated increase in retail sales (within Burlington City limits) attributable to the event;

- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2020 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2020.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Andy Machin, Tournament Director
Pacific Premier FC
PO Box 12427
Everett, WA 98206

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the 20th day of November, 2018.

CITY OF BURLINGTON

**PACIFIC PREMIER FC DBA
WASHINGTON RUSH**

By _____
STEVE SEXTON, Mayor

By _____
Andy Machin, Tournament Director
Tax ID 91-1662982

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

- ATTACHMENT:** A. 2019 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

**DRAFT Event or Tourism Facility Lodging Tax Expenditure Report
Worksheet**

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2020

1. Organization: Pacific Premier FC DBA Washington Rush

2. This report covers:

Event/Activity Name: Promoting extended stay tourism by increasing scope and duration of annual soccer tournament

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity \$ 6,500

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees
_____ Tourists (from more than 50 miles away)
_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations)

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____

(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity

(please describe):