

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):