

DOCUMENT TITLE: Interlocal Cooperative Agreement between Skagit County and the Cities and Towns in Skagit County for the Joint Establishment of the Skagit County Tourism Promotion Area

DATE SIGNED: _____ (“Effective Date”)

PARTIES: Skagit County, a political subdivision of the State of Washington
City of Anacortes, a Washington municipal corporation
City of Burlington, a Washington municipal corporation
City of Mount Vernon, a Washington municipal corporation
City of Sedro-Woolley, a Washington municipal corporation
Town of La Conner, a Washington municipal corporation
Town of Hamilton, a Washington municipal corporation
Town of Concrete, a Washington municipal corporation
Town of Lyman, a Washington municipal corporation

SKAGIT COUNTY CONTRACT NO.: _____

**INTERLOCAL COOPERATIVE AGREEMENT
FOR THE JOINT ESTABLISHMENT OF THE SKAGIT COUNTY
TOURISM PROMOTION AREA**

THIS INTERLOCAL COOPERATIVE AGREEMENT FOR THE JOINT ESTABLISHMENT OF A TOURISM PROMOTION AREA (“Agreement”) is made and entered into by and among Skagit County, a political subdivision of the State of Washington (“Skagit County”), the City of Anacortes, a municipal corporation of the State of Washington, the City of Burlington, a municipal corporation of the State of Washington, the City of Mount Vernon, a municipal corporation of the State of Washington, and the City of Sedro-Woolley, a municipal corporation of the State of Washington (collectively “Cities”), and the Town of La Conner, a municipal corporation of the State of Washington, the Town of Hamilton, a municipal corporation of the State of Washington, the Town of Concrete, a municipal corporation of the State of Washington, and the Town of Lyman, a municipal corporation of the State of Washington (collectively “Towns”), under the Interlocal Cooperation Act, chapter 39.34 RCW, and the Tourism Promotion Area Act, chapter 35.101 RCW, for the purpose of establishing a joint tourism promotion area. The purpose of the joint tourism promotion area is to levy lodging charges to fund tourism promotion in the area of Skagit County, the Cities, and the Towns. Skagit County, the Cities, and the Towns are collectively referred to herein as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the tourism and recreation industry is a vital and substantial component of Skagit County’s economy and tourism promotion increases the number of visitors to the region, increasing regional sales and supporting the local economy; and

WHEREAS, the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington. In 2003 the Legislature passed Engrossed Substitute Senate Bill No. 6026, codified at chapter 35.101 RCW (the "TPA Act"), authorizing counties, cities, and towns to enter into interlocal agreements under chapter 39.34 RCW to establish tourism promotion areas. The purpose of tourism promotion areas is to generate revenue to be used exclusively to promote tourism in the specific promotion area; and

WHEREAS, the Operators of Lodging Businesses, as those terms are defined below, who would pay sixty percent (60%) or more of the proposed Lodging Charges throughout the Cities, Towns, and Skagit County, are preparing to initiate the formation of a tourism promotion area pursuant to the TPA Act. The Operators of Lodging Businesses expect to commence the process by presenting to Skagit County an Initiation Petition, as provided for in RCW 35.101.020, to form the Skagit County TPA. The proposed boundaries of the area will be Skagit County, Anacortes, Burlington, Mount Vernon, Sedro-Woolley, La Conner, Hamilton, Concrete, and Lyman (the "Skagit County TPA"); and

WHEREAS, depending on occupancy rates, the Operators of the Lodging Businesses project that on an annual basis, the proposed Skagit County TPA will generate approximately \$500,000.00 in revenue for tourism promotion. This amount is an estimate. The amount will vary from year to year depending upon the fluctuating occupancy rates of Lodging Businesses; and

WHEREAS, the revenue stream from the Lodging Charges, as defined below, will establish and promote a Skagit County tourism promotion program to bring more visitors to the area, bolster occupancy at Lodging Businesses, retain current jobs and create new jobs, increase business at restaurants and retail stores, and increase patronage in the arts, cultural, recreational, entertainment, and sporting venues in an increasingly competitive marketplace; and

WHEREAS, Skagit County, as the Legislative Authority as defined below, will impose the Lodging Charges. Skagit County will also contract with the State of Washington, Department of Revenue for the administration and collection of the Lodging Charges; and

WHEREAS, Lodging Charges received from the proposed Skagit County TPA will be remitted to Skagit County as provided for in chapter 35.21 RCW. These resources, under the advisement of the Skagit TPA Advisory Board, will be used by Skagit County to contract with tourism destination marketing organizations, and other such organizations, to promote the area of Skagit County, the Cities, and the Towns, with an increase in tourism throughout the area. The promotion of the region is expected to provide economic benefit to businesses and industries that are connected to the Lodging Business industry and important to the health of the local economy; and

WHEREAS, the Parties now wish to enter into this Agreement for the purpose of appointing a Legislative Authority to receive the Initiation Petition and otherwise carry out the terms of the TPA Act and this Agreement, in order to facilitate the formation and operation of the Skagit County TPA.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the Parties agree:

AGREEMENT

1. Definitions.

In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

1.1 “Agreement” means this Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area within the boundaries of Skagit County, Burlington, Mount Vernon, Sedro-Woolley, La Conner, Concrete, Hamilton, and Lyman by

and among the Parties entered into pursuant to the TPA Act and the Interlocal Cooperation Act, as they may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed that if Hamilton, Concrete, or Lyman (“Small Towns”) elect not to enter into this Agreement, it shall not nullify this Agreement. Rather, in the event one or more of the Small Towns opt not to enter into this Agreement, the Agreement will continue in full force and effect except to the extent: 1) those Small Towns that do not enter into this Agreement shall not be a party to this Agreement; 2) the Skagit County Tourism Promotion Area shall not include the geographic area of those Small Towns, if any, that are not a party to this Agreement; and 3) the Small Towns not a party to this Agreement will not be eligible to be a representative, or appoint a designee, to the Skagit TPA Advisory Board.

1.2 “Anacortes” means the City of Anacortes, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.3 “Annual Budget” means the annual budget approved pursuant to Section 8 of this Agreement.

1.4 “Annual Business Plan” means the annual business plan approved pursuant to Section 8 of this Agreement.

1.5 “Burlington” means the City of Burlington, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.6 “Concrete” means the Town of Concrete, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.7 “Consultant” mean one or more consultants, organizations including tourism destination marketing organizations or other similar organizations, that Skagit County, as the Legislative Authority of the Skagit County TPA, may contract with and/or consult with, under the advisement of the Skagit TPA Advisory Board, on matters relating to the Skagit County TPA, including but not limited to the operation and management of the Skagit County TPA. When used in this Agreement, the defined term Consultant refers to the particular consultant(s) that Skagit County, as the Legislative Authority, contracts with for the operation and management of the Skagit County TPA.

1.8 “Hamilton” means the Town of Hamilton, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.9 “Initiation Petition” means the initiation petition presented to the Legislative Authority pursuant to the TPA Act meeting the requirements set forth in RCW 35.101.020.

1.10 "Interlocal Cooperation Act" means chapter 39.34 RCW, as may be amended from time to time.

1.11 “La Conner” means the Town of La Conner, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.12 "Legislative Authority" means the Legislative Authority of the Skagit County TPA appointed pursuant to Section 3 of this Agreement and having the duties and responsibilities as set forth in the TPA Act.

1.13 “Lodging Business” means a business located within the Skagit County TPA that furnishes lodging taxable by the State under chapter 82.08 RCW that has 40 or more lodging units. Lodging facilities with fewer than 40 rooms are not considered a Lodging Business for the purpose of this Agreement and are exempt from any charges imposed under chapter 35.101 RCW or this Agreement.

1.14 "Lodging Charges" means the charges set forth in the Lodging Businesses' Initiation Petition to the Legislative Authority as provided for in RCW 35.101.020 and .050, and adopted by the Legislative Authority. The Legislative Authority will, in turn, impose the Lodging Charges on the Operators of Lodging Businesses within the Skagit County TPA. These charges will be passed on by the Operators to the guests of the Lodging Businesses, under the authority of the TPA Act, for the purpose of providing funding for tourism promotion in the boundaries of the Skagit County TPA.

1.15 “Lyman” means the Town of Lyman, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.16 “Management Agreement” means the agreement(s) for the operation and management of the Skagit County TPA, including but not limited to, agreements entered into between Skagit County and Consultant.

1.17 “Mount Vernon” means the City of Mount Vernon, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.18 “Operator” or “Operator of a Lodging Business” means an operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sublessee, mortgagee in possession, licensee, or any other similar capacity that has the authority to act on behalf of, and bind, the Lodging Business.

1.19 “Partners” means a third-party partner that the Skagit County TPA may collaborate and partner with, share resources with, and advance common goals, consistent with the objectives of the Skagit County TPA and considering the recommendations and input from the Skagit TPA Advisory Board all as set forth in this Agreement. Skagit County, as the Legislative Authority, shall be authorized to enter into Memoranda of Understanding and other agreements with such Partners, after considering the recommendations and input from the Skagit TPA Advisory Board. Partners may include, but are not limited to: a) any of the Parties to this Agreement; b) Tribal Communities located within Skagit County, including, but not limited to

the Swinomish Tribe, Samish Indian Nation, the Upper Skagit Indian Tribe, and the Sauk-Suiattle Indian Tribe; c) the Port of Skagit, the Port of Anacortes, and other ports that may be established within Skagit County; and d) individuals, businesses and organizations.

1.20 Sedro-Woolley” means the City of Sedro-Woolley, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.21 “Skagit County” means Skagit County, a political subdivision of the State of Washington.

1.22 “Skagit County Lodging Association PS” means the nonprofit professional service corporation formed March 17, 2017 comprised of lodging business professionals in Skagit County for the purpose of providing tourism industry and marketing expertise, or its successor;

1.23 "Skagit County Tourism Promotion Area" means the geographic area identified in the Initiation Petition, subject to the provisions of Section 1.1.

1.24 “Skagit County TPA” means the Skagit County Tourism Promotion Area.

1.25 “Skagit TPA Advisory Board” means an advisory board created by the Legislative Authority pursuant to Section 7 of this Agreement.

1.26 "State" means the State of Washington.

1.27 “Tourism Promotion” means actions and expenditures designed to increase domestic and international tourism and convention business, including, but not limited to, promotion, branding, advertising, publicizing, marketing, and the preparation and distribution of information for the purpose of encouraging and welcoming travelers, visitors, and tourists to the Skagit County TPA. Such activities include, but are not limited to, strategic planning, market research, creative development, media placement, metrics, sales activities, and designing, hosting and communicating about events relating to promotion and marketing of the Skagit County TPA, operating tourism destination marketing organizations, or contracting with such organizations or other similar organizations, to administer the operation of the Skagit County TPA, and administration, operation, start-up costs, and management support for such services, including, but not limited to, overhead costs (including office rent, supplies, equipment and administrative costs incurred by the Legislative Authority arising out of its role as the Legislative Authority for the Skagit County TPA), staff costs, public notice advertising, legal and accounting costs, and auditing costs, including audits of the Parties and Consultant relating to or arising from this Agreement.

2. Purpose of Agreement.

The purpose of this Agreement is to: (1) promote tourism within the boundaries of the

Skagit County TPA by appointing a Legislative Authority for the purpose of accepting an Initiation Petition for the formation of the Skagit County TPA; (2) memorialize the agreement among the Parties relating to the Skagit County TPA; and (3) provide for the structure, governance, and administration of the Skagit County TPA. Once created, the Skagit County TPA will permit the collection of Lodging Charges from Lodging Businesses in order to fund Tourism Promotion. As provided for in RCW 35.101.020, the Initiation Petition must describe the boundaries of the proposed tourism promotion area, the proposed uses and projects to which the proposed revenue from the Lodging Charges will be used and the total estimated costs, the estimated rate for the Lodging Charges with a proposed breakdown by class of Lodging Businesses, if such classification is to be used, and the signatures of the Operators of the Lodging Businesses in the proposed area who would pay sixty percent or more of the proposed Lodging Charges.

3. Appointment of Legislative Authority.

Skagit County is hereby appointed as the Legislative Authority of the Skagit County TPA for purposes of this Agreement and the TPA Act. References in this Agreement to the Legislative Authority shall mean Skagit County, serving in its capacity as the Legislative Authority of the Skagit County TPA. Skagit County shall, in turn, act through its legislative authority, the Board of County Commissioners (“Commissioners”).

It is hereby understood and agreed by the Parties that Skagit County, serving in its capacity as the Legislative Authority, shall, after receiving the Initiation Petition, proceed with considering and adopting a resolution of intention, as provided for in RCW 35.101.030, to establish the Skagit County Tourism Promotion Area designated to include the jurisdictional boundaries of Skagit County, the Cities, and the Towns, subject to the provisions of Section 1.1, and hold a public hearing to consider the establishment of the Skagit County TPA, as provided for in RCW 35.101.030(1), after providing proper notice under the terms of the TPA Act, including those set forth in RCW 35.101.060.

It is understood and agreed to by the Parties that the purpose of forming the Skagit County TPA is to provide an additional source of revenue to be used to fund Tourism Promotion within the boundaries of the Skagit County TPA.

Notwithstanding anything herein to the contrary, if the Skagit County TPA is not formed by September 1, 2020, this Agreement shall terminate and shall be of no further force or effect. Provided the Skagit County TPA is formed by September 1, 2020, Skagit County shall proceed in the manner described in this Agreement and as provided for in the TPA Act, acting as the Legislative Authority of the Skagit County TPA.

4. Powers and Obligations of the Legislative Authority.

The Parties acknowledge and agree Skagit County is being appointed solely to serve as the Legislative Authority for purposes of the TPA Act. The day to day operations of the

Skagit County TPA, including but not limited to, the management, planning, and expenditure of collected Lodging Charges, shall be governed and administered as provided for in this Agreement and shall be managed by a Consultant appointed by, and contracted with Skagit County, as manager and operator of the Skagit County TPA, as provided for in Section 8 below. Skagit County, when acting in its capacity as Legislative Authority, shall have the authority to:

a) Receive the Initiation Petition from the Lodging Businesses, adopt a resolution of intent to form the Skagit County TPA, hold a public hearing as required by the TPA Act, and otherwise carry out the terms of the TPA Act;

b) Pursuant to the authority of chapter 35.101 RCW, by ordinance establish and form a Tourism Promotion Area, known as the Skagit County Tourism Promotion Area, to include the unincorporated area of Skagit County and the entire area within the corporate limits of the Cities and Towns, establish rates of Lodging Charges and levy Lodging Charges pursuant to the terms of this Agreement, the Initiation Petition, and the TPA Act;

c) In accordance with RCW 35.101.130(1), may create a Skagit TPA Advisory Board to make recommendations to Skagit County as the Legislative Authority regarding the use of Lodging Charges collected pursuant to this Agreement;

d) As provided for in RCW 35.101.130(2), enter into agreements with third parties, including Consultant and Partners, as necessary or appropriate to fully implement the purposes of this Agreement and the Skagit County TPA, including but not limited to, agreements with tourism destination marketing organizations, or other similar organizations, to administer the operation of the Skagit County TPA;

e) Adopt an Annual Budget and an Annual Business Plan for the Skagit County TPA. The Annual Budget and Annual Business Plan shall be prepared and proposed by the Consultant and presented to the Skagit TPA Advisory Board for review and consideration and recommendation to the Legislative Authority, Skagit County, as provided for in Section 8;

f) Conduct regular and special meetings regarding the Skagit County TPA;

g) Enter into agreements with the State of Washington, Department of Revenue, as provided for in RCW 35.101.090, and receive funds from federal, state or local agencies and distribute such funds to parties and organizations administering the operation of the Skagit County TPA;

h) Receive and account for all funds allocated to the Skagit County TPA; and

i) Engage in any and all other acts necessary or appropriate to further the goals of this Agreement and to form the Skagit County TPA.

5. Levy of Lodging Charges on Lodging Businesses within the Skagit County TPA.

5.1 *Adoption of Ordinance.* By adoption of ordinance, Skagit County as the Legislative Authority under the authority of chapter 35.101 RCW, will levy Lodging Charges on the Operators of Lodging Businesses within the Skagit County TPA in accordance with the classifications as set forth in the Initiation Petition. The Parties acknowledge and agree, Lodging Charges shall not apply and shall not be imposed upon rooms: a) in which the occupant has stayed 30 or more continuous days as provided for in WAC 58-20-166, as may be amended; b) in which the United States government is directly paying for the rooms as provided for in WAC 458-20-166(5)(h), as may be amended; and c) as provided for in RCW 35.101.055, consisting of temporary medical housing exempt under RCW 82.08.997, as may be amended.

5.2 *Contract with the Department of Revenue.* The Legislative Authority shall contract with the State Department of Revenue for the administration and collection of the Lodging Charges pursuant to the provisions of RCW 35.101.090. As provided for in RCW 35.101.100, Lodging Charges shall be deposited into the local tourism promotion account created in the custody of the State Treasurer. In accordance with the provisions of RCW 35.101.100, the State Treasurer will have the authority to distribute the revenue allocable to the Skagit County TPA, to the Legislative Authority, on a monthly basis. Skagit County, as the Legislative Authority, shall act as fiscal agent for the Skagit County TPA and shall be responsible for receiving Lodging Charges from the State Treasurer and holding such funds in a segregated account(s) until remitted to the Skagit County TPA and/or its Consultant pursuant to Section 8 of this Agreement.

5.3 *Change in Rates.* Any change in the Lodging Charges rates, or classification as set in the resolution of the Legislative Authority, shall be made only by amendment of the ordinance by the Legislative Authority, and only upon written request by the Operators of Lodging Businesses in the proposed area who would pay sixty percent or more of the proposed charges.

5.4 *Nature of Lodging Charges.* It is understood and agreed by the Parties that the Lodging Charges imposed in the Skagit County TPA are not a tax on the "sale of lodging" for the purposes of chapter 82.14 RCW. It is further understood and agreed by the Parties the Lodging Charges imposed under this Agreement are in addition to the special assessments that may be levied under chapter 35.87A RCW.

6. Use of Revenue Generated.

The revenue generated from the Lodging Charges collected by the State Department of Revenue and remitted to the Legislative Authority will be held in a designated account to

fund Tourism Promotion of the Skagit County TPA in accordance with the Annual Budget and Annual Business Plan adapted by the Legislative Authority. Included within the scope of Tourism Promotion is the administration, operation, formation, and start-up costs associated with the Skagit County TPA and the ongoing management and maintenance of the Skagit County TPA.

7. Establishment of a Skagit TPA Advisory Board. The Parties to this Agreement agree that Skagit County, as the Legislative Authority, has the authority under the TPA Act to establish the Skagit TPA Advisory Board as provided for herein. The Skagit TPA Advisory Board may make recommendations to the Legislative Authority regarding the way in which revenue derived from the Lodging Charges is to be used to promote tourism within the Skagit County TPA and work with the Consultant in reviewing, considering, and recommending the Annual Budget and Annual Business Plan to the Legislative Authority for consideration and adoption.

a) The members of the Skagit TPA Advisory Board will include, to the extent practical, the following: (i) a representative, or designee, recommended by each of the Parties to this Agreement except that the towns of Lyman, Hamilton, and Concrete shall jointly recommend one member to the Skagit TPA Advisory Board, subject to the provisions of Section 1.1; (ii) seven members recommended by the Skagit County Lodging Association PS or its successor; (iii) one member recommended by the Economic Development Alliance of Skagit County (“EDASC”) or its successor; (iv) one member recommended by the Skagit County Chamber Executive Directors’ Association (“SCCEDA”) or its successor; and (v) one additional member selected by the Legislative Authority. In the event Skagit County Lodging Association PS, EDASC, or SCCEDA no longer exist and do not have a successor, the Legislative Authority will designate other designees to serve on the Skagit TPA Advisory Board representative of the interests of the original member that is no longer in existence.

b) The initial members of the Skagit TPA Advisory Board shall serve staggered terms, with one-third of the members serving one-year terms, one-third of the members serving two-year terms, and one-third of the members serving three-year terms as set by Resolution of the Legislative Authority. At the initial meeting of the Skagit TPA Advisory Board, its Members shall appoint a chair to provide and coordinate notice of future meetings of the Skagit TPA Advisory Board and to chair the meetings. The Skagit TPA Advisory Board will consider and adopt standing rules, intended to supplement those set out herein, regarding notices, meetings, attendance, member terms, minutes, and decision-making of the Skagit TPA Advisory Board. The affirmative vote of a majority of a quorum of the Skagit TPA Advisory Board will be required to carry any motion, to adopt any rule, or to pass any measure. A quorum shall consist of forty percent (40%) of the appointed membership.

c) Each member of the Skagit TPA Advisory Board will serve to the best of their ability, working on behalf of the goals and objectives of the Skagit County TPA. The Skagit County TPA and the Skagit TPA Advisory Board will develop a conflict of interest policy that each member of the Skagit TPA Advisory Board will execute. The members’ work on behalf of the Skagit TPA Advisory Board, and the Skagit County TPA, will be without charge or payment.

8. Management of Skagit County TPA; Annual Budget and Business Plan; Reporting Requirements.

8.1 *Contract.* Skagit County, as the Legislative Authority, may contract, with input and recommendations from the Skagit TPA Advisory Board, with Consultant pursuant to one or more Management Agreements for the management and operation of the Skagit County TPA. The Parties acknowledge and agree Consultant will advise and make recommendations to the Skagit TPA Advisory Board and Skagit County, as the Legislative Authority, on all matters related to the Skagit County TPA and to carry out its purposes as set forth in this Agreement. Such services shall include administering the activities and programs of the Skagit County TPA and preparing a proposed Annual Budget and Annual Business Plan for the Skagit County TPA for the review and consideration of the Skagit TPA Advisory Board and Skagit County, as provided for in more detail in Section 8.2 below.

8.2 *Annual Budget and Annual Business Plan.* The Consultant shall prepare and propose an Annual Budget and Annual Business Plan to the Skagit TPA Advisory Board for its review, consideration and input. The Skagit TPA Advisory Board will, in turn, propose to Skagit County, as the Legislative Authority, a recommended Annual Budget and Annual Business Plan. Skagit County, as the Legislative Authority, will either adopt the recommended Annual Budget and Annual Business Plan as submitted, or return the Annual Budget and Annual Business Plan to the Skagit TPA Advisory Board for further review and consideration before again presenting the Annual Budget and Annual Business Plan to Skagit County, as the Legislative Authority, for review and adoption. In the event the Skagit TPA Advisory Board does not present a recommended Annual Budget and Annual Business Plan to the Legislative Authority by the date annual budgets are due to the County Auditor as established annually by resolution signed by the Board of County Commissioners, then the Legislative Authority may create an Annual Business Plan and Annual Budget with or without the assistance of the Consultant. The TPA Advisory Board may request budget amendments in conjunction with the Legislative Authority's regularly scheduled quarterly budget amendment process. In the first year of the Skagit County TPA operation and after collection of revenues derived from Lodging Charges, the Skagit TPA Advisory Board may recommend a partial year Annual Budget and Annual Business Plan for Lodging Charges expenditures for the Legislative Authority's consideration as part of the Legislative Authority's regularly scheduled quarterly budget amendment process.

Skagit County, as the Legislative Authority, will consider the proposed Annual Budget and Annual Business Plan recommended by the Skagit TPA Advisory Board, setting forth the anticipated revenues from the Lodging Charges for the upcoming fiscal year and providing for the proposed use of such revenue, for the purposes set forth in this Agreement, for the upcoming fiscal year, and once approved, will provide a copy of the Annual Budget and Annual Business Plan to the Parties. The Annual Budget shall consist of:

- a) A list of the Lodging Businesses subject to Lodging Charges and

an estimate of the projected aggregate revenue to be received from all such Lodging Businesses (this projection shall be based on a collective basis rather than that projected by individual Lodging Businesses); and

b) A statement of the proposed budget for all Skagit County TPA activities and programs to be funded from Lodging Charges during the ensuing fiscal year.

8.3 *Fiscal Agent.* All Lodging Charges received by Skagit County, as fiscal agent for the Skagit County TPA, from the State Department of Revenue, and any interest thereon, shall be deposited by Skagit County in a special account, for the benefit of the Skagit County TPA. Payments to Consultant will be made as provided for in contracts executed by Skagit County and Consultant. Provided, however, no revenue from the Lodging Charges shall be transferred in any fiscal year until after the adoption of that year's fiscal Annual Budget.

8.4 *Other Marketing Efforts.* The Parties acknowledge and agree that revenue derived from the Lodging Charges is intended to enhance, supplement, and extend the existing tourism marketing efforts of the Parties and to attract more visitors, both business and leisure visitors, to Skagit County, bolster Lodging Business occupancy, retain current jobs and create new jobs, increase business at restaurants and retail stores, and increase patronage at arts, cultural, and sporting venues within the Skagit County TPA in an ever increasingly competitive marketplace.

9. Meetings.

9.1 *Meetings.* All meetings of the Legislative Authority and the Skagit TPA Advisory Board shall be held in full compliance with the Washington Open Public Meetings Act, chapter 42.30 RCW, as may be amended.

9.2 *Quorum.* A quorum for a meeting of the Skagit TPA Advisory Board shall consist of forty percent (40%) of the appointed membership, as provided for in Section 7. In the absence of a quorum at any such meeting, the meeting may be adjourned as allowed by and pursuant to RCW 42.30.090, as may be amended.

10. Initial Duration; Withdrawal of a Party and Termination.

10.1 *Initial Term.* The initial duration of this Agreement shall be for a period of ten years from its Effective Date ("Initial Term"), subject to amendment as provided for in Section 13.9. The Parties agree, however, that in the fifth year of the Initial Term, they will review the Agreement, and its terms, and consider whether they wish to make any amendments to the Agreement as provided for in Section 13.9.

10.2 *Withdrawal from Agreement; Termination by the Parties.* Any Party to this Agreement may withdraw its participation in this Agreement, and in the Skagit County TPA, by providing written notice, and serving that notice to the Legislative Authority, all as

provided herein. No Party is permitted to withdraw, however, until this Agreement has been in force at least three years from the Effective Date. Once this Agreement has been in force for three years, any Party may withdraw by providing at least one year notice of its intent to withdraw. By requiring at least one year notice prior to withdrawing from the Skagit County TPA, the Parties acknowledge and agree the importance of notice well in advance of the Skagit County TPA's budget and planning cycle. The Party giving notice of intent to withdraw may revoke its notice by giving written notice of revocation to the Legislative Authority, provided such revocation is provided within forty-five days of the original notice.

Within 90 days after receiving proper notice from a Party that it wishes to withdraw its participation in this Agreement, as provided for in RCW 35.101.140, as may be amended, the Legislative Authority shall disestablish the requested area by ordinance following a hearing to receive public comment regarding the proposed boundary revision and/or disestablishment of an area of the Skagit County TPA. As provided for in RCW 35.101.140, as may be amended, and as applicable, before adopting such an ordinance, the Legislative Authority shall adopt a resolution of intention: (i) identifying the Party that has given notice of withdrawal, (ii) stating that Skagit County TPA may be modified or terminated, as applicable, (iii) describing the change or changes proposed, or indicating it is the intention to revise the boundaries or disestablish the Skagit County TPA, and (iv) providing the time and place of a public hearing to be held by the Legislative Authority on the proposed action; provided, the public hearing shall be at least 15 days prior to consideration of the proposed action. Unless the written notice of withdrawal has been revoked by the withdrawing Party and accepted by the Legislative Authority, the revision or disestablishment of the affected area of the Skagit County TPA shall become effective on the date specified by the Legislative Authority, however, such effective date shall not exceed 45 days from the completion of the public hearing considering the revision of TPA boundaries or disestablishment.

For the sake of clarity, it is the intention of the Parties that this Section 10 provides for a method of withdrawal and/or termination of this Agreement that is initiated solely by a Party to this Agreement. This Section 10 is intended to be in addition to the method of modification and/or disestablishment of the Skagit County TPA as provided in Section 11 below.

11. Modification or Disestablishment of the Skagit County TPA by Petition.

11.1 *Modification or Disestablish.* Upon receipt of a petition expressing the wish to revise the boundaries, or disestablish some or part of the Skagit County TPA, bearing the signatures of the Operators of Lodging Businesses in the Skagit County TPA who pay 60% or more of the total Lodging Charges in the area proposed to be disestablished, as provided for in RCW 35.101.020(4), as may be amended, the Legislative Authority may disestablish the requested area by ordinance following a hearing before the Legislative Authority, as provided for in RCW 35.101.140, as may be amended. In doing so, as provided for in RCW 35.101.140, as may be amended, the Legislative Authority shall adopt a resolution of intention to revise the boundaries or disestablish the Skagit County TPA, and shall state the time and place of a public hearing to be held by the Legislative Authority to consider the

proposed action, provided, the public hearing shall be at least 15 days prior to consideration of the proposed action.

11.2 *Action.* After conducting a public hearing to take public comment on the proposed action as required under Section 11.1 above, the Legislative Authority may, by ordinance, disestablish the requested area of the Skagit County TPA resulting in a revision of boundaries. Notwithstanding the foregoing, if at a hearing held pursuant to Section 11.1 above a petition objecting to the boundary revision or disestablishment is presented, with the signatures of Operators of Lodging Businesses in the Skagit County TPA who pay 60% or more of the Lodging Charges within the area proposed to be removed from the Skagit County TPA, the Skagit County TPA shall not be altered or disestablished. If such a petition objecting to the proposed boundary revision or disestablishment of the affected area is not presented at the hearing, and provided the statutory requirements of the Act, as may be amended, are met, the Legislative Authority shall proceed by ordinance to disestablish an area of the Skagit County TPA.

11.3 *No Obligation.* Notwithstanding anything to the contrary in this Agreement, in no case shall any of the Parties be obligated to satisfy the outstanding obligations of the Skagit County TPA from such Party's moneys, funds, or other sources of revenue unless it otherwise agrees to in writing.

12. Accounting, Books, and Records.

12.1 *Funds and Audit.* As provided for in RCW 35.101.090, as amended, the Lodging Charges shall be administered by the State of Washington, Department of Revenue and shall be collected by Lodging Businesses from those persons who are taxable by the State of Washington under chapter 82.08 RCW. As provided for in RCW 35.101.09(3) the Lodging Charges authorized by RCW chapter 82.08, as amended, and this Agreement that are collected by the State of Washington, Department of Revenue (“DOR”), shall be deposited by the DOR in to a separate Skagit County TPA tourism promotion account, as provided for in RCW 35.101.090 and .100. These monies shall be subject to the same audit and fiscal controls as other funds held by the designated County Treasury and in full compliance with record-keeping and accounting methods required by Washington law and/or the Washington State Auditor and Washington State Treasurer in compliance with the requirements of any applicable state program. Interest on investment of the Skagit County TPA funds shall accrue to the benefit of the Skagit County TPA.

12.2 *Records, Audits and Reports: Public Records Requests.* At the expense of the Skagit County TPA, the Legislative Authority shall maintain records and accounts of all operations and expenditures of the Skagit County TPA. All records shall be maintained and be available for inspection and photocopying under the provisions of the Washington Public Records Act, chapter 42.56 RCW (“PRA”), as amended, subject to any exemptions or limitations on disclosure.

13. Miscellaneous Provisions.

13.1 *Waiver.* No elected official, officer, employee, or agent of Skagit County, the Cities, or the Towns has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement by the Parties shall be held to be a waiver of any other or subsequent breach. Failure of the Parties to enforce any of the provisions of this Agreement, or to require performance of any of the provisions herein, shall in no way be construed to be a waiver of such conditions, nor in any way effect the validity of this Agreement or any part hereof, or the right of the Parties to enforce each and every such provision.

13.2 *Records.* All records prepared, owned, used, or retained by Consultant in conjunction with operating or administering the activities and programs of the Skagit County TPA as provided for under the terms of this Agreement shall be made available by Consultant, upon request, to the Parties.

13.3 *Property and Equipment.* Except as otherwise agreed by Skagit County and Consultant, Skagit County shall be the owner of all property and equipment purchased in furtherance of this Agreement from the revenue generated by the Lodging Charges. In the event of the termination of the Management Agreement with Consultant, Consultant shall make the property and equipment owned by Skagit County available to the successor manager for its use in conjunction with providing similar services to the Skagit County TPA. Provided further, in the event of disestablishment of the Skagit County TPA, all property and equipment purchased by Consultant from revenue generated by the Lodging Charges shall be retained by Skagit County and used for any lawful purpose.

13.4 *Complete Agreement; Supersedure.* This Agreement contains the complete and integrated understanding and agreement between the Parties and supersedes, repeals, and replaces in whole any understanding, agreement, or negotiation whether oral or written not set forth herein including but not limited to any previous agreement adopted by a Party concerning the establishment of the Skagit County TPA. All the terms and conditions agreed upon by the Parties concerning the establishment of the Skagit County TPA and the collection of Lodging Charges from Operators of Lodging Businesses. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The Parties have read and understand each of the terms of this Agreement, and affirm that no representation, promise, or agreement not expressed in this Agreement has been made to induce the officials of Skagit County, the Cities, or the Towns, to execute this Agreement.

13.5 *Severability.* In the event any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

13.6 *Each Party Responsible for Own Negligence.* Each Party to this Agreement will be responsible for the acts and omissions of its own elected officials, officers, employees, and agents in the performance of this Agreement. None of the Parties will be considered the agent of the other and none of the Parties will assume any responsibility to the other Parties for the consequences of any act or omission of any person, firm, governmental authority or agency or entity not a Party to this Agreement. The Parties shall each indemnify and hold harmless one another, and their respective elected officials, officers, employees, and agents, from any and all liabilities, damages, fees, costs, and expenses, including but not limited to, claims, judgments, or awards of damages arising out of the acts or omissions of any of them or of their respective elected officials, officers, employees, and agents, and shall process and defend at their own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against any of them, arising out of, in connection with, or incident to this Agreement and/or any of their performance, or failure to perform, any aspect of this Agreement.

13.7 *Filing of Agreement.* This Agreement shall become effective immediately after it is duly adopted and executed by the Board of the Skagit County Commissioners, City Council of the City of Anacortes, City Council of the City of Burlington, City Council of the City of Mount Vernon, City Council of the City of Sedro-Woolley, Town Council of the Town of La Conner, and provided they enter into this Agreement, the Town Council of the Town of Hamilton, Town Council of the Town of Concrete, and Town Council of the Town of Lyman, and shall be filed and/or posted as required by RCW 39.34.040 of the Interlocal Cooperation Act.

13.8 *Notice.* Any formal notice or communication to be given among the Parties to this Agreement shall be deemed properly given, if delivered either by physical or electronic means, or if mailed postage prepaid and addressed to:

Skagit County
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

City of Anacortes
Post Office Box 410
Anacortes, WA 98221

City of Burlington
833 S. Spruce Street
Burlington, WA 98233

City of Mount Vernon
Post Office Box 809
Mount Vernon, WA 98273

City of Sedro-Woolley
325 Metcalf Street
Sedro-Woolley, WA 98284

Town of La Conner
Post Office Box 400
La Conner, WA 98257

Town of Hamilton
Post Office Box 528
Hamilton, WA 98255

Town of Concrete
Post Office Box 39
Concrete, WA 98237

Town of Lyman
Post Office Box 1248
Lyman, WA 98263

13.9 *Amendment.* This Agreement may be amended by the mutual consent of all of the Parties. No additions to or alterations of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of all Parties.

13.10 *No Separate Entity.* It is not the intention that a separate legal entity be established to conduct this cooperative undertaking, and no separate legal entity is established by this Agreement.

13.11 *Neutral Authorship.* Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the Parties. No presumption of other rules of construction that would interpret the provisions of this Agreement in favor of, or against, a Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The Parties each represent they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so, or have voluntarily chosen not to do so. The Parties represent and warrant they have fully read this Agreement, understand its meaning and effect, and enter into this Agreement with full knowledge of its terms.

13.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of whom shall be an original, but those counterparts will constitute one and the same instrument.

Signatures on next page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

RON WESEN, Commissioner

KEN DAHLSTEDT, Commissioner

LISA JANICKI, Commissioner

Recommended:

By: _____
Trisha Logue, County Administrator

Approved as to Indemnification:

By: _____
Donnie LaPlante, Risk Manager

Approved as to Form:

By: _____
Melinda Miller, Deputy Prosecuting Attorney

Attest:

By: _____
Clerk of the Board

Date: _____

