

**2013 LODGING TAX SERVICES AGREEMENT
BETWEEN KITTITAS COUNTY AND ELLENSBURG DOWNTOWN ASSOCIATION**

This Contract, dated January 23, 2013 is made and entered into by and between KITTITAS COUNTY ("County") and ELLENSBURG DOWNTOWN ASSOCIATION ("Contractor").

WHEREAS, the purpose of this Agreement is to provide for activities and expenditures designed to increase tourism,

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the County and the Contractor mutually agree as follows:

Section 1. Scope of Work.

- a. Contractor shall provide the services and staff described in its **Application for Lodging Tax Funds** submitted to the Lodging Tax Advisory Committee, attached hereto as **Exhibit "A."**
- b. Except as otherwise specifically provided in this Agreement, Contractor shall furnish the following as required to perform the services, described in Paragraph (a) above, in accordance with this Agreement: Personnel, labor and supervision; technical, professional and other services. All such services, property and other items furnished or required to be furnished, together with all other obligations performed, or required to be performed, by Contractor under this Agreement are collectively referred to herein as "Services."
- c. In relation to facilities operations, Contractor warrants that after June 30, 2013, the lodging tax funds shall be used only for the operation of facilities in which the County or applicable city has an ownership interest.
- d. Contractor warrants that after June 30, 2013, the lodging tax funds shall be confined to the actual marketing of special events and festivals designed to attract tourists.
- e. Contractor shall commence, perform and complete such Services in accordance with any and all attachments to this Agreement.

Section 2. Payment.

- a. As full compensation for satisfactory performance of the Contractor's Services, the County agrees to pay Contractor the sum of four thousand dollars (\$4,000).
- b. Additional payment terms: The County will make payment to the Contractor only on a reimbursement basis, as receipts for any items including marketing and/or advertising are submitted to the County, not to exceed the sum of four thousand dollars (\$4,000).
- c. Funds under this Contract which are disbursed for operations as opposed to marketing of special events and/or festivals designed to attract tourists, or used for the support of the operations and capital expenditures of tourism-related facilities owned by non-profit

organizations, shall be completed and the Contractor's request for reimbursement completed and received by the County on or before June 15, 2013 in order to receive reimbursement on or before June 30, 2013.

Section 3. Performance by Contractor.

- a. Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of the County. Any such delegation or subcontracting without the County's prior written consent shall be voidable at the County's option.
- b. Contractor shall at all times be an independent contractor and not an agent or representative of the County with regard to performing the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of the County. In no event shall Contractor be authorized to enter into any Agreement or undertaking for or on behalf of the County. It is understood that the Contractor and the Contractor's staff and employees are not employees of the County and are not, therefore, entitled to any benefits provided employees of the County.
- c. Contractor shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, of any governmental authority (including, but not limited to, such requirements as may be imposed upon the County and applicable to Services). Contractor shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules, and orders required to be incorporated into agreements of this character are incorporated into this Agreement by this reference. Contractor agrees to obtain all required licenses and permits, and further agrees to keep them in full force and effect during the term of this Agreement.
- d. The County and the Contractor agree that in fulfilling the terms and conditions of this Agreement neither shall discriminate on the basis of race, creed, color, national origin, age, sex, marital status, or the presence of a physical, sensory, or mental handicap.
- e. The Services shall at all times be subject to inspection by and approval of the County, but the County's making (or failure or delay in making) such inspection or approval shall not relieve Contractor of its responsibility to perform the Services in accord with this Agreement, notwithstanding the County's knowledge of defective or non-complying performance, or the substantiality or ease of discovering the same. Contractor shall provide the County with sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.
- f. This contract is subject to review by any Federal or State auditor. Contractor shall promptly furnish the County or its designee, or such Federal or State auditor with such information related to the Services as may be requested by the applicable governmental entity. Contractor shall preserve and maintain all financial records and records relating to performance of Services under this Agreement for six (6) years after contract termination. For such duration after the County makes final payment of compensation due hereunder, Contractor shall provide the County access to (and the County shall have the right to examine, audit and copy, with or without notice) all of Contractor's books, documents, papers and records related to the Services or this Agreement.

- g. Contractor understands and acknowledges that Contractor is solely responsible for its own reporting and accounting of all state, federal, social security, and local taxes, of every nature, arising from Contractor's performance of this Agreement. All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accord with the applicable IRS regulations.

Section 4. Release, Indemnity, and Hold Harmless.

The County assumes no liability for the Contractor's actions under this Agreement. Contractor releases and shall defend, indemnify, and hold harmless the County, its officers and employees, agents, representatives, attorneys and/or volunteers, from and against all claims, costs, liabilities, damages, and expenses, (including, but not limited to, reasonable attorney fees) which arise or may arise or be alleged to arise out of or by reason of this Agreement including:

- Any fault, negligence, strict liability or product liability of Contractor in connection with the Services for this Agreement;
- Any lien asserted upon any property of the County in connection with the Services for this Agreement;
- Any failure of Contractor, or of the Services, to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; or
- Any breach of or default under this Agreement by Contractor.

Section 5. Compliance with Public Records Law.

- a. In compliance with Washington's public records law, the County will retain copies of any documents associated with this Agreement, which may be required by law unless legally exempt from such retention, for any applicable legally required retention period.
- b. In the event a public records request is made to the County for documents created in relation to this Agreement, should legal uncertainty arise regarding the disclosability of any documents under federal or state public records laws, the County shall provide notice to Contractor pursuant to Washington's public records act, chapter 42.56 RCW, to allow Contractor to seek a court injunction.
- c. The County specifically shall not be liable to Contractor for the County's release under public records laws of any documents not protected by trademark, copyright or other law.

Section 6. Industrial Insurance Waiver.

With respect to performance of this Agreement and as to any claims against the County, its Additional Insureds, officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to Contractor's employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement

extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

Section 7. Insurance and Endorsements.

- a. The County may require through a request in writing that the Contractor provide the County with a certificate, binder, or policy of liability insurance, acceptable to the County in an amount specified by the County.
- b. Such liability insurance shall be such as will protect Contractor, its employees, agents and representatives, from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the Services or this Agreement, whether such performance is by Contractor or any of its employees, agents or representatives.
- c. Should the County require such liability insurance, the Contractor agrees to provide proof of insurance prior to commencing performance of this Agreement.
- d. Copies of the County's written request and the insurance documents provided by Contractor shall be attached to this Agreement and by this reference will be made part hereof.
- e. Where insurance is requested by the County, all liability insurance policies shall be endorsed to include the County as an Additional Insured and shall stipulate that the insurance afforded by the policies shall be primary insurance, and that any insurance, self-insured retention, deductibles, or risk retention trusts maintained or participated in by the Parties shall be excess and not contributory to any other insurance maintained by the County. Contractor shall furnish the County a certificate of insurance with Endorsement as evidence that the required policies are in full force and effect.

Section 8. Termination.

The County may, by written notice thereof to Contractor, terminate this Agreement as to all or any portion of the Services not yet performed, whether or not Contractor is in breach or default. Upon receiving such notice of termination, Contractor shall, except as otherwise directed by the County, immediately stop performing the Services to the extent specified in the notice. In the event the County terminates the Contractor's Services, the Contractor is obligated and hereby agrees to refund to the County all monies paid for Services not yet rendered by the Contractor, if any, as of the date of the notice of termination.

Section 9. Miscellaneous.

- a. Contractor shall not (by contract, operation of law or otherwise) assign this Agreement or any right or interest in this Agreement without the County's prior written consent.
- b. This Agreement embodies the entire Agreement between the County and Contractor, and supersedes any and all prior oral or written communications, proposals, conditions, promises, representations, or understandings regarding the Services. No change, amendment or

modification of any provision of this Agreement shall be valid unless set forth in a written amendment to the Agreement signed by both parties.

- c. Notice for any purpose under this Agreement, except service of process, shall be given by the Contractor to the Kittitas County Commissioners and the Kittitas County Auditor, 205 W 5th Ave, Suites 108 and 105, Ellensburg, WA 98926. For all purposes under this Agreement, any notice by the County to the Contractor shall be given to the Contractor's address provided on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid, certified mail, return receipt requested.
- d. The section and paragraph headings of this Agreement are for reference convenience only and are not intended to restrict, affect or be of any weight in interpreting or construing the provisions of such sections or paragraphs.
- e. This Agreement may be executed in one or more counterparts and by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- f. Contractor warrants to the County that the individual signing on Contractor's behalf has the requisite power and authority to enter into and to perform Contractor's obligations under this Agreement. Contractor further warrants to the County that Contractor has made no misrepresentation or misleading statement in connection with this Agreement, and is not in violation of any applicable law, ordinance, or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Agreement.
- g. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect the other terms, conditions or applications 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.
- h. The exclusive venue for any action brought to enforce this Agreement or any of its terms shall be in Kittitas County, State of Washington.

KITTITAS COUNTY

BOARD OF COUNTY COMMISSIONERS

Chair

Vice Chair

Commissioner

ATTEST: _____
Julie Kjorsvik, Clerk of the Board

CONTRACTOR

[Print Name]

[Address]

[Telephone]

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

DQ

Kittitas County Lodging Tax Grant
2013 Funds Application

RECEIVED

OCT 26 2012

1st _____ 2nd _____ 3rd _____
KITITAS COUNTY BOARD OF COUNTY COMMISSIONERS

Organization: Ellensburg Downtown Association

Status: 501(c)(3)

In existence since 2006

Mailing Address: P.O. Box 966, Ellensburg, WA 98926

Phone: 509-962-6246

Billing Address: P.O. Box 966, Ellensburg, WA 98926

Email Address: director@ellensburgdowntown.org

Contact Person: Carolyn Honeycutt, Director

Mission: To enhance the cultural and economic vibrancy of historic downtown Ellensburg

Project Name: *Buskers in the Burg**

In 2011 we started the festival using the name Ellensburg FallFest. ...Buskers in the Burg, because of the education needed to the local public about the word busker. In 2012 the EDA chose to drop the FallFest out of the name and simplify it to just *Buskers in the Burg*.

Describe Project: After only two years, *Buskers in the Burg* has found a place in the calendar of events for Kittitas County as a fall festival. Highlighting street performers (buskers), the farmer's market, foods, wine, beer, and spirits, local artists, music, and children's activities, Buskers is a true taste of Ellensburg and Kittitas County. In 2012, over 25 buskers performed, over 450 children participated in activities that included donated bounce houses from Bounce Central, straw maze, chalk art, and activities by PSE, the Library, and Spirit of the West. There were more than 350 text votes for favorite busker act, and between 600-800 people at the evening concert.

We were able to attract many people from out of town with the unique aspects of the festival and a west-side musical act (Star Anna). One of the more amazing parts of 2012 Buskers was the Giant Puppet Art Parade. Here the artists and their creations shined and the crowd was in awe. This activity drew many from the west side who were associated with the artist Brian Kooser.

In 2013, we will continue to grow on the strong foundation the EDA has built for Buskers. We are excited by the support from businesses and organizations we have partnered with for this festival and know that the festival will continue to grow and bring enhanced tourism to the county.

Geographic Area Served: Kittitas County, with tourism advertising to pull people from the west side, tri-cities, Yakima area, and Moses Lake area.

Anticipated Project Period: September 28, 2013

Amount of Contribution Requested for Hotel/Motel fund: \$8,000

Other funding sources for the project:

Budgeted Income: (no commitments to date)
Sponsorships/Donations \$6,000
Tokens, Tasting Halls, Concert \$7,000
City Lodging Tax, Arts Commission \$8,500

Has the organization received funding from the Kittitas County Hotel/Motel Tax in the past for this specific project? √ Yes, \$4,000 for 2012 Buskers in the Burg

Authorized Signature 

Date 10-26-2012

Questions:

- Project Description:** The third annual *Buskers in the Burg* will be held September 28, 2013. In 2012, this event was held for the second time and had a great turnout. We spoke with many individuals visiting from Tacoma, Portland, Seattle, and the tri-cities for the festival. All of them thought it was a terrific addition to Ellensburg's event calendar. The festival was well-organized and very well attended and continues to lay the foundation for a growing and unique experience for tourist.

On Saturday the event will include:

- Promotion of the existing Kittitas County Farmers Market – this activity will be extended into the afternoon in 2013
- The 2nd annual Giant Puppet Parade. Brian Kooser will host workshops again in 2013 for the public to create a variety of wonderful puppets. This specific activity brought many people in the arts community from the west side to Ellensburg
- Buskers (street performers – musicians, jugglers, dancers, etc) performing on the sidewalks throughout downtown
- Tasting Halls – featuring area wine, brews, and spirits paired with area foods
- Children's activities – building on the great activities in 2012, will include inflatable rides, pony rides, giant bubbles, street art with chalk, pumpkin painting, scarecrow making

- Evening concert with top buskers performing followed by a band who will draw from outside areas (600-800 people attended in 2012)

We will continue to market Buskers to include activities available to people on Sunday, so they will stay the night. The evening concert keeps them late as well. The EDA also is continuing to explore partnerships for Sunday activities that will fit in with the festival (chimpanposium, tours).

County funds will support marketing efforts via TV, radio, Facebook, and print in west side and tri city markets, as well as further growth of the festival with support for developing the giant puppets, buskers, and evening concert performance, all of which are the major festival attractions.

2. **Cooperative Efforts:** This festival involves many partnerships, including The Children's Activity Museum, Kittitas County Chamber Tourism and MYELLENSBURG.COM, local fire department, Bounce Central, Film Festival (promoted a movie in a downtown venue to preview their festival the following weekend), Gallery One, Arts Commission, PSE, Library, Farmer's Market, CWU, downtown merchants, area wineries, breweries, and distilleries, and area restaurants. Financially in 2012 we partnered with Kelleher Motor as the concert venue and advertising partner, city lodging tax, Solarity Credit Union, Starlight Lounge, Mid-State Appraisal Services, Fitterer's Furniture, and Gifts of the Vine. Our plan is to build upon and increase partnerships, both in-kind and financial in 2013.
3. **Relevance to Kittitas County Tourism:** In 2012, Buskers partnered directly with Chamber Tourism to build the marketing campaign. We often hear that one of the strengths of our county tourism is the great events, and Buskers has the potential of being one of the annual events that will bring large numbers of tourists to the region. In only two years, it has already drawn attention and buzz in both the community and region.

Working with Chamber Tourism and the hoteliers closer this year – we plan to market more packages to draw more attendees. We already have evidence of many traveling from outside the area for the event. One of the things that really hurt the festival in 2012 was the air quality related to the fires. Few people were traveling to our area and most were leaving, because of the terrible air. We just happen to get lucky with the festival falling on one of the few days with good air, but in general tourism suffered because of air quality in the summer of 2012.

Our marketing focus will continue to be west side radio (Star Anna did a guest appearance on one of the stations to help promote) and social media, along with tri-cities TV, radio, social media, and publications. All great audiences to draw for this festival. Partnerships have helped to create advertising that includes other reasons to come and stay in the area.

4. **Target Market:** There are several target markets that Buskers attracts:

- Families with young children
- Music, dance, and theater enthusiasts
- Baby boomers and empty nesters who enjoy tasting venues
- People from the west side and tri-cities who want to get away from the hustle and bustle of the city and enjoy the very sunny and welcoming Kittitas County and Ellensburg!

5. **Need – Problems/Challenges:** Buskers in the Burg is a unique fall festival, offering great activities for many ages, especially children. Prior to this festival, there were few family activities that could draw people for an entire day or weekend. The incorporation of the arts, music, and adult activities strengthens its draw. The festival has officially chosen the last Saturday of September as its annual date. There are no other major events that weekend.

6. **Increase Occupancy Projections:** While not as many as originally estimated, the 2012 festival did create overnight stays in local hotels/inns. The Holiday Inn Express relayed to the committee that they had overnight guests who came for the festival and we spoke with many people who had traveled from other regions to attend. Continuing to develop the festival and its draw, along with working closer with the hotels on ways to bring people here is a main focus.

In 2013 we believe Buskers will increase occupancy for the following reasons:

- Offering a great festival that attracts various markets into a sunny area away from the hustle and bustle of the big city
- Evening activities to keep the crowd downtown late, with out-of-town guests staying for at least one overnight
- Working with area hoteliers to put together packages that include discounted stays with tasting venue tickets. Also working with them to put together the tour packages.
- Continuing to develop stronger partnerships with county tourism

Poor air quality in 2012 quite possibly affected the number of attendees, who might normally travel to Ellensburg, but the attendance was very good and the reputation created very strong, which will continue to foster growth of the event. Many say it takes five years to really make it a draw and we've made great progress in only two.

We estimate that over 1500 people attended 2012 Buskers in the Burg. For 2013 we anticipate that will double to 2500 and 10% of them will come from over 50 miles away and with about half staying the night.

Conservatively, this provides us an estimate of overnight hotel stays in Kittitas County by event attendees: 250 visitors x 50% hotel stays = 125 rooms.

This is still a new and growing event. In these first few years, it is very important to have the needed financial support from the lodging tax to sufficiently market and build the festival, as more sponsors get on board and more attendees put the event on their calendar. Because of some volunteer issues, the surveys for 2012 were unable to be completed. This will be a priority for 2013 and more volunteers will allow for better surveying to increase awareness of how we are reaching the audiences and what they are traveling to do and see in Kittitas County.

7. **Sales Tax Revenue Projections:** Merchants have continued to say that the day of the festival was quite busy. As sales increase in the merchant's shops, so does the sales tax. With that said, if the average visitor for Buskers in the Burg were to spend the following:

- Overnight Accommodations: \$ 75
- Dining (3 meals x 2 days x 2 people) \$300
- Retail Spending (estimated)/other \$400
- Fuel $\$100 = \$875 \times \$0.08 = \70

\$70 sales tax per couple staying for one overnight x 125 (estimate from previous question) = \$8,750 in sales tax revenue.

8. **Time Frame:**

- October 2012 – Met to recap prior meeting, pay bills, get volunteer core committee commitments
- January 2013 – Begin meeting to plan for 2012 FallFest. Establish committees:
 - Children's activities
 - Tasting Halls
 - Buskers and Entertainment
 - Sunday Tours and Activities
 - Advertising and Publicity
 - Sponsorships
- January/February 2013 – Identify potential sponsors and make contacts
- Feb/March 2013 – Identify evening concert act and secure contract
- March 2013 – Begin recruiting buskers and entertainment
- March 2013 – Contact wine, beer, and distilleries
- March 2013 – Organize ideas for children's activities
- March 2013 – Identify hotel package options and make contacts
- June 2013 – Contract with buskers and tasting venues
- June 2013 – Complete Website updates

- August 2013 – begin on-line advertising campaign, work with hotels on packages
- August 2013 – Advertising placed in Rodeo and Kittitas County event programs
- August – September 2013 – Bulk of advertising push
- September 28, 2013 – Buskers in the Burg

9. **Operational Capacity Ability:** The Ellensburg Downtown Association was formally established in 2006 and has been able to sustain itself through financial support and fundraising over the years. In fact, this fiscal year the EDA is able to purchase holiday snowflakes lights for the downtown poles, half of which were purchased through an excess of reserve funds, and is planning to put forth some funds for downtown street furniture (benches, trash receptacles, planters).

The EDA has shown great success in the past year with the Buskers in the Burg, Hoedown in the Downtown, the new Hometown Holidays promotions, snowflakes on the street poles, partnerships, and new website. These efforts will help to sustain the EDA for years to come. The 2012 Busker Festival incurred a small loss, but stayed close to the budget. Partnering with Chamber Tourism will help us determine ways to draw larger crowds. Sponsorships will continue to grow with continued success.

10. **Accomplishments:** This year the EDA will put forth a strong effort to gain better knowledge about where are visitors are coming from, how many nights they are staying, what attracted them to Buskers, and how they heard about it. We will also be able to track website hits through Google Analytics on the Buskers site, myellensburg.com, and Visit Kittitas County sites. We already gained a great deal of knowledge with this information and our Facebooks ads as to who is being attracted to these types of events.

In 2013 a stronger effort for surveys and zip code gathering will be completed at the tasting venues, evening concert, and the children's activities. Attendees will be asked the following questions:

- Where did you travel from?
- How long will you be staying in Kittitas County?
- How often to do stay overnight in the area?
- What other events do you travel for?
- How did you hear about Buskers?

We will also work with the hotels on better packages and email blasts that can be tracked for effectiveness. Contact will be made with hotels and Chamber months prior to the event to discuss how to respond to inquiries and information will be out to the hotels in a timely manner to promote the event starting in the spring 2013.

Because we chose the last Saturday in September as our permanent date, we will be able to use the same rack cards printed in 2012 for years to come. They are already located in many areas around town for visitors to pick up.

11. **Future Support:** As Buskers grows, tickets sales and sponsorships will grow. A full menu of sponsorships was created in 2012 and will continue to for support for buskers, street dance, tasting venues, and children's activities. Support grew substantially from 2011 to 2012 and will continue its upward momentum.
12. **Board of Directors:** Yes, the EDA has a legally constituted Board of Directors which governs the organization, as well as an Advisory Board of business leaders who assist in decision-making. The Board of Directors is responsible for overseeing the other committees as well as supervising the professional paid staff, which currently consists of the EDA Director.

13. Current Year's Budget:

EDA Budget – January 2012 – December 2012

Income:	
Business/City Support	\$141,500
Committee Revenues	
Design Committee	\$17,488
Promotions	\$4,750
Organization	\$1,500
Economic Restructuring	\$2,000
Special Events	
Buskers in the Burg	\$23,000
Rodeo Hoedown	\$7,800
Interest Income/Other	\$1,000
Total Budgeted Income:	\$199,038
Expenses:	
Committee Expenses	
Design Committee	\$54,738
Promotions	\$2,550
Organization	\$7,150
Economic Restructuring	\$5,800
Special Events	
Buskers in the Burg	\$23,000
Rodeo Hoedown	\$7,300
Office and Organization	\$26,245
Payroll and Payroll Taxes	\$76,263
Staff Development	\$2,000
Total Budgeted Expenses	\$205,046
Net Ordinary Income/Loss	(\$6,008)

Proposed 2013 Buskers in the Burg proposed budget

Income:	
Sponsorships	\$6,000
Ticket Sales	\$7,000
County Lodging Tax	\$8,000
City Lodging Tax	\$8,500
Total Budgeted Income:	\$29,500
Expenses:	
Advertising (west side, tr-cities)	\$10,000
Local Advertising	\$2,500
Printing	\$1,000
Buskers and Entertainment	\$7,500
Puppet Development - parade	\$2,000
Children's Activities	\$1,000
Tasting Venues	\$4,000
Insurance, portable toilets, other	\$1,500
In-kind:	
Advertising (\$4000)	
Bounce Houses (\$1500)	
Website upgrades (\$1500)	
Total Budgeted Expenses	\$29,500
Net Income/Loss	Break even

- 14. Independent Financial Review:** A CPA submits federal 940 tax forms and the Board of Directors reviews the financials monthly, approves budgets, expenditures, and monthly financials, which are approved each month in the Board meeting minutes. All checks require two signatures. If the grant requires further independent review, that will be arranged for immediately.

