

**2013 LODGING TAX SERVICES AGREEMENT  
BETWEEN KITTITAS COUNTY AND WESTERN ART ASSOCIATION**

This Contract, dated January 23, 2013 is made and entered into by and between KITTITAS COUNTY ("County") and WESTERN ART 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 5<sup>th</sup> 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:

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Deputy Prosecuting Attorney

RECEIVED

OCT 26 2012

1st \_\_\_\_\_ 2nd \_\_\_\_\_ 3rd \_\_\_\_\_  
 INTERIM BOARD

**Section 5 – Application**

**Organization Name:** Western Art Association

**I.R.S. status:** 501c (3) XX Other \_\_\_\_\_

**How long has Organization been in existence?:** 40.5 Years

**Organization's Mailing Address:** 309 N Pearl ST., Ellensburg, WA 98926

**Phone:** 509-962-2934

**Organization's Billing Address:** Same as above

**Organization Email Address:** waa@fairpoint.net

**Primary Contact Person:** JoAnn Wise **Title:** Business Administrator

**Primary Mission:** Promote and encourage interest in our western heritage, art and artifacts and to provide educational resources relating to the settlement of the west.

**Project Name:** National Western Art Show and Auction

**Describe project:** Produce a successful event for artists to display & sell their artworks in conjunction with a major wine event. Generate revenue via the auctions to fund the county school art competition and fund three scholarships, two high school and one CWU

**Geographic area served:** Western Region of United States and Canada

**Anticipated project period:** May 17, 18 & 19, 2013

**Amount of contribution requested from the Hotel/Motel Fund:** \$4,000

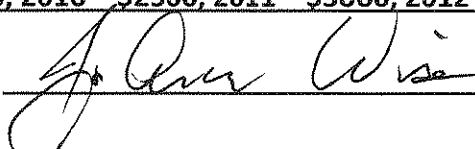
**Other funding sources for this project:** Contributions

Source/Commitments To Date	Amt.	Other Sources Applied to for this Project (include other lodging tax funds from the Cities of Ellensburg, Cle Elum, South Cle Elum, and Roslyn)	Amt.
None			

Has your organization received funding from the Kittitas County  
Hotel/Motel Tax in the past for this specific project? Yes   X   No       

If Yes, please list the year(s) and amount(s) for funding received:

2003-05 / 2007-09 ~ \$2000, 2010 ~ \$2500, 2011 ~ \$3000, 2012 ~ \$4000

Authorizing Signature: 

Name:   JoAnn Wise   Date:   October 25, 2012



**Questions: Please answer each question completely. Attach a separate sheet if necessary. Please include any supporting data within the response narrative, not as a separate attachment unless specifically requested.**

1. Project Description – Please describe in detail including specifically how the County funds will be used. Widespread Advertising! 2013 will inaugurate a new addition to our art show and auction. We are adding the Kittitas County Chamber of Commerce’s “Wine Festival” to our art event. This will open up a new market for advertising aimed at attracting the art and wine lovers to a combined event. We anticipate holding a wine competition under the direction of the World Wine Program of CWU.

2. Is this project part of a cooperative effort between organizations and/or multiple jurisdictions within Kittitas County? Explain.  
Yes. The WAA, the Kittitas County Chamber of Commerce and the EDA will be planning portions of the event. The WAA will focus on art, auctions and space utilization at the event center while the Chamber will be putting together the wineries and the wine competition which will be under the direction of the World Wine Program of CWU. The EDA will work on related seminars and locations for same. Wineries will have an opportunity to offer samples of their beverages in the auction preview room thereby combining Art and Wine.

Also, what kind of local monetary support exists for this project?  
(Please be as specific as possible; include names of community and group contributions) Ticket sales, community business and individual financial contributions and support.

3. Relevance to all of Kittitas County– How will this project help with promoting Kittitas County tourism? The WAA annual art show and auction is widely known and attracts attendees from a wide area. Put a wine event with art and there will be double the attendees. In the WAA advertising, which is distributed multi state, it describes the county and its many attractions as the best place to visit. Many

of the visitors will be exploring in and around the Kittitas while here for the event.

4. Please describe the target market for this event or project – who are you trying to attract? Art collectors, buyers, investors, students of art and beginning this 2013 year wine connoisseurs and collectors.
5. Need –What are the problems/challenges that this project will address? Sending information to the target markets which may mean the need of mailing lists specialists.
6. Will the project increase occupancy in hotels, motels, RV parks, and campgrounds within Kittitas County? Please provide projections. Include evidence for your projections (i.e. show your work) See Section 4 of the instructions for a sample answer. Yes. A full weekend of scheduled activities and exhibits: Friday night to include a quick draw followed by an auction which will include demonstration art crated by artists during the day. Saturday will see more artists painting demo's, another quick draw with works auctioned at the "main event" auction showcasing 70 original fine art works with dinner prior to the auction.  
Attendance from 2012: 1200 attendees, 596 of those acknowledge overnight stays in the Ellensburg area. Based on figures for this year we will anticipate a 3-5% increase which will bring in an additional 30 room nights to the local area.  
2013 Western Art Show Projections:  
 $626 \text{ room booked} \times \$76(\text{ADR}) = \$47,576 \times .02 (\text{lodging Tax}) = \$951.52$   
lodging tax revenues
7. Will the project increase sales tax revenue to the County? Please provide projections. Include evidence for your projections (i.e. show your work). See section 4 of the instructions for a sample answer to question 6 which may be helpful. Yes.  
Day visitors:  $604 \times \$104/\text{day} = \$62,816$  expenditures  $\times 8\% (\text{tax}) = \$5,025.28$  sales tax revenue  
Overnight visitors:  $626 \times \$184/\text{day} = \$115,184$  expenditures  $\times 8\%(\text{tax}) = \$9,214.72$  sales tax revenue. Total Sales Tax \$14,240

8. Time Frame – Please explain steps you will take to implement this project and the dates on which you expect to accomplish each step. The event, as a whole, requires ten months of effort. Our first step is to secure the artists for the show, then obtain the final painting for the poster. Graphics for the poster are completed and the image is sent for reproduction. At the same time our brochure is being formed to be followed by the event program. This year we will be adding the new wine event to all our advertising. Finish – May 19<sup>th</sup>, 2013.
9. Can your organization demonstrate the ability to sustain operational capacity subsequent to completion of and separate from this project? If no, please explain why. If yes, please provide proof. Our organization is this event. It is why we exist and proceeds from the auctions are what has kept the Western Art Association alive for over 40 years. Our Board of Directors is comprised of educators, business owners, management and administrators who bring sound business experience and knowledge to our board.
10. How will you measure the success of this project? Please be specific as to performance indicators that will be used to measure your success. Please see Section 4 of the instructions for a sample answer to question 6 which may assist you in answering this question. Attendance and sales.
11. Future Support – Please explain what plans exist to allow this project to become self-sustaining. Include any plans for ticket sales, event sponsors, and other cost-recovery models. With the addition of the wine event to our annual art show we hope to attract a larger number of attendees. By doing this we will see more revenue from auctions and ticket sales. We will continue to search out event sponsors. Our handicap is the limited space we have for an auction room.

12. Does your organization have a legally constituted Board of Directors?  
Yes.

13. Attachments – Please attach a copy of your entire current year's budget. You must include this in order to be considered.

4:59 PM  
10/25/12  
Cash Basis

**Western Art Association**  
**Profit & Loss Budget Overview**  
August 2012 through July 2013

	Aug '12 - Jul 13
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
<b>Art Show &amp; Auction Income</b>	
Auction Sales	85,000.00
Giclee Prints	1,500.00
Posters	300.00
<b>Total Art Show &amp; Auction Income</b>	86,800.00
Contributions	300.00
Corp. Sponsors \$50 - \$499	900.00
Corp. Sponsors \$500 - \$5000	2,500.00
Exhibit Booth Fee	31,000.00
Goodey Galery Sales (Consigned art)	5,000.00
New Artist Application Fee	100.00
Ticket Sales (Auction Tickets)	3,500.00
<b>Total Income</b>	130,100.00
<b>Gross Profit</b>	130,100.00
<b>Expense</b>	
<b>Auction Expense</b>	
Advertising	
Advertising other	21,000.00
Brochures	1,500.00
Giclee Prints	1,200.00
Posters - AotAC	900.00
Posters - WAA	1,500.00
Programs	1,000.00
<b>Total Advertising</b>	27,100.00
Auctioneer	2,100.00
Awards	
Plaques	250.00
Ribbons	275.00
Student Art Contest	1,200.00
<b>Total Awards</b>	1,725.00
Catalog Production	2,500.00
Catering	6,000.00
Consignment-Auction Art	46,000.00
Exhibit Booth Set Up	3,300.00
Rent	
KCFB - Fairground Bldgs	5,100.00
Tent Rental	750.00
<b>Total Rent</b>	5,850.00
Security	3,500.00
<b>Total Auction Expense</b>	98,075.00
Credit Card Fees	1,500.00
Dir Operating & Expense Fund	9,000.00
Dues/Subscriptions/books	450.00

4:59 PM  
10/25/12  
Cash Basis

**Western Art Association**  
**Profit & Loss Budget Overview**  
August 2012 through July 2013

	Aug '12 - Jul 13
Goodey Gallery	
Consigned Art-Gallery Sales	1,000.00
Total Goodey Gallery	1,000.00
Insurance	
Liability Insurance (Liability Insurance)	1,200.00
Total Insurance	1,200.00
License & Fees	40.00
Office Expense	
Alarm System Monitoring	240.00
Rent	11,400.00
Utilities	1,100.00
Total Office Expense	12,740.00
Postage	200.00
Professional Services	
Accounting	550.00
Total Professional Services	550.00
Repair & Maintenance	200.00
Scholarship Fund	3,000.00
Supplies	350.00
Telephone & Internet Connection	1,350.00
Total Expense	129,655.00
Net Ordinary Income	445.00
Other Income/Expense	
Other Income	
Interest Income	1,500.00
Total Other Income	1,500.00
Net Other Income	1,500.00
Net Income	1,945.00