2012 LODGING TAX SERVICES AGREEMENT
BETWEEN KITTITAS COUNTY AND WASHINGTON STATE HORSE PARK

This Contract, dated April 3, 2012 is made and entered into by and between KITTITAS COUNTY ("County") and Washington State Horse Park ("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, as approved by the Board of County Commissioners on March 23, 2012 and adopted per Resolution No. 2012-033 on April 3, 2012.

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. 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 twenty thousand dollars ($20,000).

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 twenty thousand dollars ($20,000).

c. Funds under this Contract will be disbursed for services occurring during the 2012 year only. Contractor's request for reimbursement must be completed and received by the County on or before January 15, 2013. Reimbursement requests received after that date will not be paid.

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 regards to performance of 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 are 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

6/5/12

Chair ABSENT

Vice Chair

Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST: Julie Kjorsvik, Clerk of the Board

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

CONTRACTOR Leslie M Thurston

LESLIE M. THURSTON
[Print Name]

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