

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF OAK HARBOR AND
[INSERT RECIPIENT NAME]
FOR CONSULTANT SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into by and between the City of Oak Harbor, a Washington State municipal corporation (“City”), and [INSERT RECIPIENT NAME], a Washington [INSERT BUSINESS ENTITY] (“Consultant”).

WHEREAS, the City collects a 2% tax on the charge for furnishing lodging by a hotel, rooming house, tourist court, motel or trailer camp, and

WHEREAS, the use of these tax revenues is restricted by RCW 67.28.180 to the certain explicit uses, including the promotion of local tourism, and the operation of tourism-related facilities; and

WHEREAS, The City, after the Lodging Tax Advisory Committee duly advertised, reviewed and recommended lodging tax funded activities, wishes to have certain services performed hereinafter set forth requiring specialized skills and other supportive capabilities; and

WHEREAS, The CONSULTANT represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with consultant services regarding **use of 2% tax revenues for the promotion of local tourism and the operation of tourism-related facilities as recommended by the Lodging Tax Advisory Committee and confirmed by the City Council** as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as Exhibit “A” and incorporated herein by this reference (“Scope of Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 **MINOR CHANGES IN SCOPE.** The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 **WORK PRODUCT AND DOCUMENTS.** The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

III.3 **TERM.** The term of this Agreement shall commence on January 1, 2017 and shall terminate at midnight, January 31, 2018. The parties may extend the term of this Agreement by written mutual agreement upon Council approval.

III.4 **NONASSIGNABLE.** The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

III.5 **EMPLOYMENT.** Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement,

shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

III.6 INDEMNIFICATION/HOLD HARMLESS. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

III.7 INSURANCE.

- a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives or employees.
- b. **No Limitation.** Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- c. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types and coverage described below:
 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and

advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 4. Professional Liability insurance appropriate to the Consultant's profession.
- d. **Minimum Amounts of Insurance.** Consultant shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 3. Professional Liability insurance shall be written with the limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- e. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- g. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement evidencing the insurance requirements of the Consultant before commencement of the work.
- h. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.
- i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

- j. **Public Entity Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

III.8 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Island County Superior Court.

III.11 INDEPENDENT CONTRACTOR.

- a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for

carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

- b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.
- c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.
- d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.12 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant’s client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 SUBCONTRACTORS/SUBCONSULTANTS.

- a. The Consultant shall be responsible for all work performed by subcontractors/subconsultants pursuant to the terms of this Agreement.
- b. The Consultant must verify that any subcontractors/subconsultants they directly hire meet the responsibility criteria for the project. Verification that a subcontractor/subconsultant has proper license and bonding, if required by statute, must be included in the verification process. The Consultant will use the following Subcontractors/Subconsultants or as set forth in Exhibit ____:

- c. The Consultant may not substitute or add subcontractors/subconsultants without the written approval of the City.

- d. All Subcontractors/Subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 PAYMENTS.

- a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed **XXXX Dollars (\$00.00)** without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit "A", the City shall pay Consultant a mutually agreed amount.
- b. The Contractor shall be eligible for payment after the performance of all services under this contract on a reimbursable basis. The Contractor shall submit an original written invoice, with necessary and appropriate documentation to receive payment.
- c. Eligible expenses for reimbursement must be submitted using Exhibit C (page 12). The Contractor must include an itemization of services provided. Attach to Exhibit C copies of invoices/statements along with proof of payment, such as cancelled checks, copies of checks used to pay for services, receipts, (or other payment documentation indicating proof of payment that is acceptable to the City) for services purchased by the Contractor for which reimbursement is being requested; copies of the work performed (e.g. advertisement, brochure, website page, flyer, etc.). For lodging tax contacts, include documentation that the promotional effort reached an audience outside of 50 miles if applicable.

Address Reimbursement Request to:

City of Oak Harbor
ATTN: City Clerk
865 SE Barrington Drive
Oak Harbor, WA 98277

- d. Invoices for reimbursement must be submitted by **January 31, 2018**. Receipts received after that date will not be paid.
- e. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

f. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

IV.2 **CITY APPROVAL.** Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 **MAINTENANCE/INSPECTION OF RECORDS.** The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

ARTICLE V. GENERAL

V.1 **NOTICES.** Notices to the City shall be sent to the following address:

City of Oak Harbor
ATTN: City Clerk
865 SE Barrington Drive
Oak Harbor, WA 98277

Notices to the Consultant shall be sent to the following address:

XXXX
XXXX
XXXX
XXXX

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 **TERMINATION.** The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section VI.1.

- V.3 **DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.
- V.4 **EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.
- V.5 **SEVERABILITY**
- a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
 - b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.
- V.6 **NONWAIVER.** A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.
- V.7 **FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.
- V.8 **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- V.9 **VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Island County, Washington.
- V.10 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 **AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 2016.

CITY OF OAK HARBOR

[RECIPIENT NAME]

By _____
_____, Finance Director

By _____
Recipient

Approved as to form:

City Attorney

Attest:

City Clerk

EXHIBIT "A"

SCOPE OF WORK

The City will provide such assistance and guidance as may be required, in the City's sole discretion, to support the objectives set forth in the Scope of Work and will provide funding for the services and activities as set forth below.

The 2017 hotel/motel tax award for the Contractor is \$XXXX

Uses of the funds are as follows:

\$00.00 Funds to be used for Marketing, Advertising, and Operations Costs.

Post-Event Reporting

The Contractor shall complete a Post Event/Activity Information Report, attached as Exhibit "B", for the contract year. The annual report is a requirement established by the 2013 Washington State Legislature. The report shall be provided to the CITY immediately after the event, festival or activity, but due no later than **January 31, 2018**.

The City shall file an annual report with the State of Washington Joint Legislative Audit and Review Committee (JLARC) for lodging tax activity which will detail information received from the Contractor, and other recipient organizations.

EXHIBIT "B"

Post Event/Activity Information Report for Lodging Tax Contractors
Report is due immediately after event but no later than December 1, 2018

Send to: City of Oak Harbor, ATTN City Clerk, 865 SE Barrington Drive, Oak Harbor, WA 98277, or athompson@oakharbor.org

1. Organization Name and Event/Tourism Facility Name:

2. Total Oak Harbor lodging tax funds used for Event or Facility \$ _____
3. Total Cost of Event or Facility \$ _____
4. Please provide the **actual numbers** for the following questions, including the **methodology used**:

QUESTION	ANSWER
1. Overall Attendance at your event?	
Methodology used:	
2. Total people who traveled more than 50 miles for your event?	
Methodology used:	
3. Of those who traveled more than 50 miles, the number of people who traveled from another state or country?	
Methodology used:	
4. Of the people who traveled more than 50 miles, the number of people who stayed overnight in the City of Oak Harbor or Oak Harbor area?	
Methodology used:	
5. Of the people staying overnight – the number of people who stayed in PAID accommodations (hotel/motel/bed-breakfast) in the City of Oak Harbor or the Oak Harbor area?	
Methodology used:	
6. Of the people staying overnight – the number of people who stayed in UNPAID accommodations (friends or family) in the City of Oak Harbor or the Oak Harbor area?	
Methodology used:	
7. Number of PAID lodging room nights resulting from your event? (E.g. – 20 paid rooms on Friday & 30 paid rooms on Saturday = 50 paid rooms.)	
Methodology used:	

Submitted by: _____ **Date:** _____

Exhibit "C"
Invoice Request for Payment

BILLING DATE: _____

INVOICE AMOUNT: \$_____

CONTRACTOR NAME: _____

ADDRESS: _____

EIN/TIN: _____ (For 1099 reporting purposes)

SUBSCRIBED this _____ day of _____, 2017.

Signed: _____

Title: _____

Type of Services Rendered:

Invoice Requirements:

Please provide an itemization of services provided. Attach to this invoice copies of invoices/statements and cancelled checks (or other payment documentation acceptable to the City) for services purchased by the Contractor for which reimbursement is being requested; copies of the work performed (e.g., advertisement, brochure, website page, flyer, etc.); and, for lodging tax contracts, documentation that the promotional effort reached an audience outside of 50 miles.