

WHITE PASS SCENIC BYWAY TOURISM SERVICE AGREEMENT

Lodging Tax agreement: Marketing and promotion

THIS AGREEMENT is made by and between White Pass Scenic Byway (“the ORGANIZATION”), and Lewis County (“the COUNTY”), a political subdivision and municipal corporation of the state of Washington.

WHEREAS, Chapter 67.28 RCW authorizes legislative bodies of municipalities to impose excise taxes on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapter 82.08 RCW; and

WHEREAS, the Lewis County Board of County Commissioners (“the BOARD”), the legislative body of and for the COUNTY, by enacting Ordinance No. 1163A – Lodging Tax, imposed the excise taxes authorized in Chapter 67.28 RCW; and

WHEREAS, tourism is defined as economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts or souvenirs; and

WHEREAS, tourism promotion is defined as activities, operations and expenditures designed to increase tourism, including but not limited to advertising, publicizing or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists; and

WHEREAS, tourism-related facility is defined as real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities; and

WHEREAS, RCW 67.28.1815 in part states that: “All revenue from taxes imposed under said Chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities ...;” and

WHEREAS, the COUNTY Lodging Tax revenues have been credited to the Tourism Promotion Fund (No. 1980) in the treasury of the COUNTY; and

WHEREAS, the ORGANIZATION applied through the Lewis County Lodging Tax Advisory Committee (“the LTAC”) for financial assistance for authorized uses from COUNTY Lodging Tax proceeds (“the Proposal”); and

WHEREAS, the LTAC has facilitated these efforts by (a) developing the application forms and procedures, (b) coordinating the funding availability advertising, (c) evaluating submitted application packets, (d) determining whether the proposed use is authorized, and (d) advancing

the financing award recommendations to the BOARD, including the Proposal from the ORGANIZATION; and

WHEREAS, the BOARD has determined that the activity herein described promotes the general welfare, health and safety of the citizens of the COUNTY and is consistent with RCW 67.28; and

WHEREAS, the BOARD finds that the use of the funds is for tourism, tourism promotion or a tourism-related facility, and that it is in the best interest of the COUNTY in regard to the promotion of tourism in Lewis County; and

WHEREAS, the BOARD intends to disburse COUNTY Lodging Tax proceeds to the ORGANIZATION for the purposes stated in its Proposal and consistent with RCW 67.28.

NOW, THEREFORE, in consideration of the premises and mutual benefits and covenants herein contained, it is agreed by and between the parties hereto as follows:

FUNDING: Up to \$ 90,000.00 is hereby pledged on a reimbursement basis from the COUNTY Tourism Promotion Fund No. 1980 in fiscal year 2022 solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities or operation of tourism-related facilities within Lewis County. Said amount shall constitute the maximum reimbursement the ORGANIZATION is eligible to receive from the COUNTY under this Agreement. Depending on the use of funds requested to be reimbursed and the date of use, less than the maximum amount authorized under this Agreement may actually be reimbursed.

- 1. USE OF FUNDS:** The ORGANIZATION shall use these COUNTY funds solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities in Lewis County authorized by RCW 67.28. The specific services represented by the ORGANIZATION to be authorized by RCW 67.28 and to be provided by the ORGANIZATION to the COUNTY under this Contract are described in Attachment A: Project Scope.

Funds must be used as outlined in the ORGANIZATION'S Project Scope and in accordance with RCW 67.28, which outlines appropriate fund use as the following:

- Tourism marketing;
- Marketing and operations of special events and festivals designed to attract tourists;
- Operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district, including repayment of general obligation bonds (RCW 67.28.150) or revenue bonds (RCW 67.28.160) for eligible capital projects; or
- Operations of tourism-related facilities owned or operated by nonprofit organizations (but not capital expenditures).

Definitions of “tourism,” “tourism promotion,” and “tourism-related facility” are provided in RCW 67.28.080.

2. **ACKNOWLEDGEMENT:** The ORGANIZATION shall acknowledge the COUNTY as a sponsor in all publications, media materials and press releases related to the project. Lewis County will supply logos upon request.
3. **PAYMENT PROVISIONS:** Once this Agreement is executed, the ORGANIZATION may submit claim vouchers to the Clerk of the Lewis County Board of County Commissioners at 351 NW North Street, Chehalis, WA 98532 requesting reimbursement solely for eligible expenses and/or for eligible services as identified in Section 2 of this Agreement (Use of Funds), Attachment A: Scope of Work, and Attachment B: Purchasing and Reimbursement Guidelines, and solely up to the maximum amount specified in Section 1 (Funding).

Each reimbursement claim voucher shall include the following certificate of authenticity with the dated signature of an authorized representative of the ORGANIZATION: “I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished and the services rendered as described herein, and that this claim is a just, due and unpaid obligation against Lewis County Tourism Promotion Fund No. 1980.” Within thirty (30) days of receiving a reimbursement claims voucher that meets the requirements of this Agreement and applicable law, the Clerk of the BOARD, on behalf of the COUNTY, shall remit to the ORGANIZATION a warrant for the approved reimbursement amount.

Claims vouchers can be submitted monthly. Claims vouchers must be submitted by the following quarter deadlines:

First quarter: March 31, 2022.

Second quarter: June 30, 2022.

Third quarter: Sept. 30, 2022.

Fourth quarter: Jan. 6, 2023.

The **final** claims voucher under this Agreement shall be submitted to the Clerk of the BOARD by the ORGANIZATION no later than **January 6, 2023**.

4. **EVALUATION AND MONITORING:** The ORGANIZATION agrees to maintain its books and records and to employ accounting procedures, systems and practices that accurately and timely record and track the expenditures for which reimbursement is sought under this Agreement and provide for full compliance with the requirements of this Agreement. The ORGANIZATION will retain these supporting records for at least three (3) calendar years following the year in which the Agreement expires.

The COUNTY and/or the State Auditor and any of their representatives shall have full, timely and complete access to all books, records and other documents and evidence of the ORGANIZATION respecting all matters related to this Agreement and the activities for which

reimbursement is sought or made, and shall have the right to examine such during normal business hours as often as the COUNTY and/or the State Auditor may deem necessary. Such representatives shall be permitted to audit, examine and make excerpts of or transcripts from such records, and to audit all contracts, invoices, materials, and records of matters related to this Agreement and the activities for which reimbursement is sought or made. These access and examination rights shall continue for three (3) calendar years following the year in which the Agreement expires.

The COUNTY cannot guarantee but intends for its agents to use reasonable security procedures and protections to assure that related records and documents provided by the ORGANIZATION are not erroneously disclosed to third parties. The COUNTY will, however, disclose or make this material available to those authorized in the immediately preceding paragraph or permitted under the provisions of Chapter 42.56 RCW, any other applicable public disclosure law, or order of any court or agency of competent jurisdiction, without notice to the ORGANIZATION.

The ORGANIZATION agrees to submit in writing (within 60 days of Dec. 31, 2022) a final report demonstrating the effect the ORGANIZATION's activities funded by the COUNTY have had on tourism growth and such other reports or information as required by law.

The ORGANIZATION shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this Agreement that the COUNTY requests.

5. **RECAPTURE PROVISION:** In the event the ORGANIZATION fails to expend these funds in accordance with state law and/or the provisions of this Agreement or obtains reimbursement of ineligible expenditures, the COUNTY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall continue for a period of two (2) years following release of any report from an audit conducted by the COUNTY and/or the State Auditor's Office under the Section 4 (EVALUATION AND MONITORING) provisions or the 3-year records retention period required under Section 4 (EVALUATION AND MONITORING), whichever expires later. Repayment by the ORGANIZATION of any funds recaptured under this provision shall occur within twenty (20) days of any demand. In the event the COUNTY is required to institute legal proceedings to enforce this recapture provision, the COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.
6. **NONDISCRIMINATION:** The ORGANIZATION shall comply with all federal and state nondiscrimination laws, including but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA). In the event the ORGANIZATION fails or refuses to comply with any federal or state nondiscrimination law, this Agreement may be rescinded, canceled or terminated by the COUNTY in whole or in part, and the ORGANIZATION may be declared by the COUNTY ineligible for further Lewis County tourism promotion funds. The ORGANIZATION shall be given a reasonable period of time in which to cure any such noncompliance.

7. **EMPLOYMENT RELATIONSHIPS:** The ORGANIZATION, its employees, volunteers and agents are not employees of the COUNTY for any purpose, nor are they volunteers or agents of the COUNTY. No officer, employee, volunteer or agent of the ORGANIZATION will hold himself or herself as, or claim to be, an officer, employee, volunteer, representative or agent of the COUNTY.

Because the ORGANIZATION, its employees, volunteers and agents are not employees of the COUNTY, the COUNTY is not responsible for the payment of any industrial insurance premiums or related claims of such persons and such persons are not entitled to benefits of any kind from the COUNTY, including but not limited to health insurance and retirement benefits.

8. **HOLD HARMLESS:**

- A. To the fullest extent permitted by law, the ORGANIZATION shall protect, defend, indemnify and hold harmless Lewis County, the Lewis County Board of County Commissioners, its officers, agents and employees, or any of them from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from the performance of this Agreement by either party, except those resulting exclusively from the County's sole negligence. In the event of the concurrent negligence of the ORGANIZATION, its subcontractors, agents or employees, and the County, its officers, agents, or employees, this indemnification obligation shall be valid and enforceable only to the extent of the negligence of the ORGANIZATION, its subcontractors, agents, and employees. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the ORGANIZATION hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the ORGANIZATION are a material inducement to County to enter into this Agreement, are reflected in the grant funding, and have been mutually negotiated. The ORGANIZATION shall require any subcontractors performing on the project herein to indemnify the County to an equal or greater extent than provided herein. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of any indemnity protections under this Agreement. the ORGANIZATION's obligations under this provision shall survive the completion, termination, or expiration of this contract.
- B. The ORGANIZATION shall assume the risk, liability, and pay all damage, loss, cost, and expense of any party, including its employees, arising out of the performance of this Agreement, except that caused by the sole negligence and/or willful misconduct solely of Lewis County and/or its employees acting within the scope of their employment.

C. The ORGANIZATION's obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, omission or breach of any common law, statutory or other delegated duty by the ORGANIZATION, ORGANIZATION's employees, agents, or subcontractors.

9. **ENTIRE AGREEMENT/MODIFICATIONS:** This Agreement represents the entire agreement of the parties with respect to the subject matter. No other understandings, oral or otherwise, exist regarding the subject matter of this Agreement or shall be deemed to exist. The COUNTY and the ORGANIZATION may, from time to time, mutually agree to amend this Agreement; however, no such change shall be effective until memorialized in writing and signed by the authorized representatives of the COUNTY and the ORGANIZATION, respectively.

10. **AGREEMENT PERIOD:** The term of this Agreement shall commence on the 1st day of January 2022 and terminate on the 31st day of December 2022, both dates inclusive, unless sooner terminated as provided for herein.

11. **TERMINATION OF AGREEMENT:**

A. If the ORGANIZATION breaches or violates any provision of this Agreement, the COUNTY may, in addition to any other rights provided by law, terminate this Agreement and withhold any further reimbursement, provided the violation or breach is not corrected to the satisfaction of the COUNTY within ten (10) days of the COUNTY mailing – first class and postage prepaid – written notice to the ORGANIZATION of the breach or violation.

B. In addition, either party may terminate this Agreement at any time by providing written notice of such termination and specifying the effective date thereof to the other party at least twenty (20) days prior to the effective date.

C. Also, the COUNTY may unilaterally terminate all or part of this Agreement, or reduce the Scope of Work and/or Funding, without liability, for the convenience of the County, including but not limited to the unavailability of Lewis County Tourism Promotion funds.

12. **SPECIAL PROVISION:** The failure of the COUNTY to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

13. **SEVERABILITY:** In the event any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, then said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this Agreement shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

14. **SURVIVAL OF CERTAIN PROVISIONS:** Sections 4, 5, and 8 shall survive termination of this agreement.
15. **GOVERNING LAW AND VENUE:** This Agreement shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The Superior Court of and for Lewis County, Washington shall be the venue for any suit between the parties arising out of this Agreement.
16. **NOTIFICATION:** Should the need arise during the term of this Agreement for either party to notify the other of a change in address or otherwise, the following contacts shall be used:

For the COUNTY:
 Lewis County Commissioners
 351 NW North St.
 Chehalis, WA 98532
 360-740-1120

For the ORGANIZATION (information as provided on the organization's application):
 White Pass Scenic Byway
 c/o Mary Kay Nelson
 P.O. Box 805
 Chehalis, WA 98532
 360-508-1774

Approved by the Lewis County Board of County Commissioners in an open public meeting this 21st day of December 2021.

FOR THE ORGANIZATION

White Pass Scenic Byway
 Organization's name, printed

Maree E. Lerchen
 Authorized representative's signature

Maree E. Lerchen
 Authorized rep.'s name, printed

Board Chair
 Authorized representative's title

**BOARD OF COUNTY COMMISSIONERS
 LEWIS COUNTY, WASHINGTON**

Lindsey R. Pollock, DVM
 Lindsey R. Pollock, DVM, Chair

Sean D. Swope
 Sean D. Swope, Vice Chair

F. Lee Grose
 F. Lee Grose, Commissioner

P.O. Box 805
Organization's street address

Chehalis, WA 98532
Organization's city, state, zip code

12-08-2021
Date signed by Organization rep.

APPROVED AS TO FORM:

Jonathan Meyer, Prosecuting Attorney

Jonathan Meyer

By: Dep. Pros. Attorney

ATTEST:

Rieva Lester

Rieva Lester, Clerk of the Board



Lewis County – 2022 Lodging Tax – Project Scope

Each project must include a Project Scope. Please note that your Project Scope must reflect the preliminarily approved amount and how it will be used. This information will be used to verify the expenditures listed on your reimbursement request(s). Your Project Scope must reflect the uses you presented in your original application, as that is what preliminary funding approvals were based upon. **Please do not change the format of this document, and please be brief in your explanations to fit the space provided.** PLEASE NOTE THAT THIS DOCUMENT WILL BE TIED TO THE AGREEMENTS AND WILL BE USED TO VERIFY PROJECT EXPENDITURES.

Project Submission Form

1. Project Name: White Pass Scenic Byway Marketing and Promotion	2. Date Submitted: Dec 6, 2021
3. Contact Person / Title: Mary Kay Nelson, Marketing Director	
4. Mailing Address: PO Box 805, Chehalis, WA 98532	
5. Telephone No.: 360-508-1774	
6. E-mail: info@whitepassbyway.com	
7. Signature of Representative:	
8. Project Location (city/town) Lewis County	
a. Name of Event or Activity: Marketing	
9. Statement of Project Goals and Objectives: To promote and market the US Hwy 12 Corridor targeting specific audiences who come to our area of leisure and recreational reasons, thus increasing the economy of the communities.	
10. Project Description: Using primarily digital marketing such as the mobile app, website and social media and enewsletters, we expect to reach and engage visitors who come to the region. The program involves managing a year round non profit organization with a board of 8 members and holding bimonthly meetings.	
11. How does proposed project meet purposes of the Legislation? RCW 67.28.1816	
The program is designed to measure success through analytics, statistics and growth in lodging tax revenue and taxes in Lewis County. The marketing program has the capacity to continue to grow the tourism industry and keep organizations and visitors aware of what there is to see and do in the area.	
12. Anticipated Project Costs: \$93,000	
a. Total County funds being awarded for 2022: \$90,000	

RECEIVED
Board of County Commissioners
Lewis County Washington

DEC 09 2021

13. Project Cost Analysis Project Budget

Column A Item	Column B Use of <u>County</u> Funds	Column C Use of Other Funds	Column D Total Available Project Funds
Personnel (salaries & benefits)			
Marketing/Promotion Materials	40,200		
Direct Sales Activities			
Minor Equipment			
Travel/Trainings (list below)	800	1,000	
1. Scenic WA conference			
2. WTA Mtgs. Conference			
3. Brochure distributions			
Contract Services (list below)			
1. website development	2,000		
2. social media & website	15,000		
3. Program management	30,000		
4.			
Overhead (building rent, utilities etc.)	2,000		
Sign maintenance		2,000	
Project Subtotal:	90,000	3,000	

13. Project Cost Analysis Project Budget

Column A Item	Column B Use of <u>County</u> Funds	Column C Use of Other Funds	Column D Total Available Project Funds
Personnel (salaries & benefits)			
Marketing/Promotion Materials	40,200		
Direct Sales Activities			
Minor Equipment			
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Sign maintenance		2,000	
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