

Professional Services Contract

Preamble

1. Purpose

This contract is entered into between Lewis County, hereinafter called County, and Economic Alliance, hereinafter called Contractor, for the purpose of administering and operating Discover Lewis County™.

2. Parties

Each party to this contract shall have a contract representative empowered to enter into this contract on behalf of their party. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives for this contract are:

For the County: Erik Martin, Lewis County Manager

For the Contractor: Richard DeBolt, Economic Alliance of Lewis County Executive Director

3. Authorization

Only the Lewis County Board of County Commissioners, County Manager, or its designated Contract Officer identified herein, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Lewis County Board of County Commissioners, County Manager, or its Contract Officer.

4. Contract Term

The term of this contract shall commence and terminate as stated in Exhibit A: Statement of Work and Reporting Requirements attached hereto.

5. Contractor Representation

Contractor represents by signing this contract that it is qualified and possesses the necessary capabilities and sufficient skills, including technical and professional skills where required and has the necessary licenses and certifications to perform the services set forth in this contract.

6. Mutually Negotiated

County and Contractor acknowledge and by signing this contract agree that this contract has been mutually negotiated and agreed to by both parties.

Signatures

The terms and conditions of this contract, including all attachments and subsequent amendments, constitute the entire and exclusive understanding between the parties. No other understandings, writings, and communications, oral or otherwise, regarding the subject matter of this contract shall exist to bind the parties. The parties signing below represent they have read and understand this contract, and have the authority to execute this contract.

For Lewis County

**For Economic Alliance of
Lewis County**

Erik Martin
County Manager
351 NW North St
Chehalis, WA 98532
360-740-2697
erik.martin@lewiscountywa.gov

Richard DeBolt
Executive Director
1611 N National Ave
Chehalis, WA 98532
360-748-0114
richard@lewiscountyalliance.org

Approved as to Form

Jonathan Meyer
Prosecuting Attorney

Attest:

By: _____

(Clerk of the Board)

General Terms and Conditions

1. Scope of Contractor's Services

The Contractor agrees to provide to the County services, reports, and any material set forth in Exhibit A: Statement of Work and Reporting Requirements during the contract term. No material, labor, or facilities will be furnished by the County unless otherwise provided for in this contract.

2. Accounting and Payment for Contractor Services

Payment to the Contractor for services rendered under this contract shall be as set forth in Exhibit B: Budget, Invoicing and Contractor Payment attached hereto. Unless specifically stated in Exhibit B or approved in writing in advance by the Contract Officer for this contract, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

The Contractor acknowledges that the entire compensation for this contract is specified in Exhibit B and the Contractor is not entitled to any County benefits including, but not limited to, vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Lewis County employees.

3. Recapture

In the event that the Contractor fails to perform services specified in this contract in accordance with state laws, federal laws, and/or the provisions of this contract, the County reserves the right to recapture funds in an amount required to compensate the County for the noncompliance in addition to any other remedies available at law or in equity. Repayment by the Contractor or refunds under this recapture provision shall occur within the timeframe specified by the County. In the alternative, the County may recapture such funds from payments due under this contract.

4. Independent Contractor

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein shall be construed to create a relationship of agent, employee, or servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this contract.

The Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the Contractor shall be or deem to be or act or purport to act as an employee, agent, or representative of the County.

The Contractor shall assume full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises, or payments required by any city, county, state or federal legislation which is now or may during the term of this contract be enacted as to all employees, agents or representatives of the Contractor and as to all duties, activities, and requirements by the Contractor in performance of the work on this project.

5. No Guarantee of Employment

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee an employment of the Contractor or any employee, agent or representative of the Contractor or any subcontractor, or any employee, agent or representative of any subcontractor by the County at the present time or in the futures.

6. Taxes

The Contractor understands and acknowledges that the County will not withhold federal or state income taxes. The Contractor is solely liable for any tax obligation arising from the Contractor's performance of this contract. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this contract.

7. Accountability

The Contractor shall provide the County with annual reports concerning the Contractor's performance under this contract. Such reports to, at minimum, reflect the following information:

- i. Fair and even distribution of free and low-cost marketing and website services to outside vendors across the whole of Lewis County;
- ii. Balanced revenue diversity from both future grant allocations and revenue generated from advertising services on the website; and
- iii. Overall marketing strategy performance for the current year along with future year strategy and goals

8. Regulations and Requirements

This contract shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Terms and Conditions.

9. Political Activity Prohibited

None of the funds or intellectual property provided under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or ballot measure. However, no person engaged to perform such services pursuant to this contract shall be precluded from devoting income derived from such services to any lawful political activity, or to the support of a candidate for public office or of a ballot measure.

10. Patent/Copyright Infringement

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information, goods or documentation supplied by the Contractor infringes any patent or copyright. Contractor will pay all costs, penalties, fees, and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- i. That Contractor shall be notified promptly in writing by the County of any notice of such claim.

- ii. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

11. Ownership and Use of Items Produced

Material produced in the performance of the work under this contract shall be “works made for hire” as defined by section 201(b) the U.S. Copyright Act of 1976 and shall be owned by the Contractor. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Contractor ownership includes the right to copyright, patent, register, and the ability to transfer these rights as permitted within this agreement. All writings, programs, data, public records or other materials prepared by the Contractor or any employee, agent or representative of the Contractor or any subcontractor, in connection with the performance of this contract shall be for shared between the Contractor and the County in conformance with public records and other applicable legal obligations.

It is the intent of the parties to have intellectual property and residual works generated from that property, revert to the County should termination or expiration of this Agreement occur. The Contractor agrees that if it fails to successfully complete the scope of work described in Exhibit A of this Agreement, then upon written notice by the County to Contractor, electing to exercise its rights pursuant to this section, title to the intellectual property shall revert to the County. Further, said reversionary interest shall not be subject to any reservations, conveyances, easements, options, leaseholds, or other matters affecting such portion of the intellectual property that were made or created after the date of this Agreement. In the event Contractor does complete the scope of work described in Exhibit A of this Agreement prior to its expiration, then upon Contractor’s request, the County shall execute an instrument, in recordable form reasonably acceptable to the parties, acknowledging the satisfaction of said condition and the termination of City’s reversionary interest in the intellectual property.

A copy of all or a portion of material produced shall be submitted to the County upon request or at the end of the contract using the hardware, software, or other method specified by the County at the time of such request.

12. Public Records Law

The Contractor shall assist the County in fulfilling all obligations of the County under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington). In the event that the Contractor fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the County for violation of the Public Records Act, Contractor shall indemnify the County for that penalty, as well as for all costs and attorney fees incurred by the County in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this contract.

13. Records Maintenance

The Contractor shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and

indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of seven (7) years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

14. Notice

Except as set forth elsewhere in the contract, for all purposes under this contract, except service of process, notice shall be given by the Parties to the contracting parties and addresses shown on the Signature Page attached hereto.

15. Termination

Either party may terminate this contract upon 30 days' prior written notification to the other party. If this contract is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this contract prior to the effective date of termination.

16. Termination for Public Convenience

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. The County shall make a reasonable, equitable adjustment in the contract price for partially completed items of work, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

17. Termination Procedures

After receipt of a notice of termination, except as otherwise directed by the County, the Contractor shall:

- i. Stop work under the contract on the date and to the extent specified in the notice;
- ii. Place no further orders or subcontracts for materials, services, or facilities related to the contract;
- iii. Assign to the County all of the rights, title, and interest of the contractor under the orders and subcontracts so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the County; and
- iv. Preserve and transfer any materials, contract deliverables and/or County property in the Contractor's possession as directed by the County.

The rights and remedies of the County under this section are in addition to any other rights and remedies provided under this contract or otherwise provided under law.

18. Resolution of Conflicts

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- i. Applicable federal and state statutes and regulations
- iii. Exhibits
- iv. General terms and conditions
- v. Any other provision of this contract whether incorporated by reference or otherwise.

19. Disputes, Venue and Choice of Law

The County and the Contractor agree that any disputes that arise under or relating to this contract that cannot be resolved to the satisfaction of both parties through a good faith effort to resolve, then the Parties agree that the filing on any litigation against the other party related to this agreement shall be in the Lewis County Superior Court.

20. Defense and Indemnity Agreement

The Contractor shall defend, protect, and hold harmless the County or any officers or employees thereof, from and against all claims, suits, or action arising from any intentional or negligent act or omission of the Contractor or any employee, agent or representative of the Contractor or any subcontractor, while performing under the terms of this contract.

21. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect 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 contract are declared severable.

22. Conformance

If any provision of this contract violates any statute or rule of law of the state of Washington of the United States of America, it is considered modified to conform to that statute or rule of law.

23. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the party granting such a waiver.

24. Survival

The terms and conditions contained in this contract will survive the completion, cancellation, termination or expiration of the contract.

25. Entire Agreement

This written contract along with attached exhibits and the documents and terms incorporated herein this contract, represents the entire agreement between the parties.

Exhibit A: Statement of Work and Reporting Requirements

The purpose of this **Statement of Work** is to detail the work to be performed by the Contractor and the methods and content for reporting progress by the Contractor in fulfilling all duties encompassed in this contract.

The term of this contract shall commence upon full execution of signatures from both parties and terminate on December 31, 2025.

The Contractor shall administer funds awarded hereunder, to support a variety of activities, including, but not be limited to, the following:

- Increase overnight lodging occupancy during the non-summer, shoulder-season months.
- Develop marketing campaigns that promote Lewis County as an ideal lodging ‘basecamp’ for day-trips to explore regional attractions and events as well as promoting Lewis County for tourism year-round.
- A united voice for Lewis County tourism, involving countywide industry stakeholders including but not limited to hoteliers, dining establishments, retail businesses, sports programs, as well as visitor centers, local tourism programs, chambers, and local tourism-related events. Use a comprehensive and transparent approach of tourism marketing to create unity and partnership in the industry.
- Continue the growth and evolution of Lewis County tourism by providing increasing support and leadership for tourism industry stakeholders. Position this program as the leading resource for tourism support and guidance.
- Expand the current program to include a Lewis County Tourism Partner Program. The program will implement a comprehensive communication model to build partnerships and collaborations and minimize mixed-messages and disconnected action plans. It will serve to build goodwill and demonstrate transparency within the program.
- Implement marketing and promotional support to position Lewis County as a destination capable of attracting visitors across a range of market segments through experiences based on our area’s natural, historic, and cultural assets.
- Increase program funding by creating membership/partnership models, online advertising and other revenue options that will allow for operational expenses to be self-sustaining and limit need for direct County or LTAC funding. This will enable the organization to focus all marketing funds on marketing what Lewis County has to offer.
- The tourism industry should be strengthened through the Alliance’s creation of a tourism advisory committee under the direction of the Alliance, yet distinct in name, mission, and values from the Alliance.
- Future Action: Phased approach using data available from the existing program to create data-driven, measurable goals. Identify future opportunities for growth and development.

Exhibit B: Budget, Invoicing, and Contractor Payment

The County shall pay an amount not to exceed the remaining funds undisbursed of the 2022 LTAC funding award until December 31, 2022 to the Contractor for work as described in Exhibit A, subject to conditions set forth in this Exhibit B: Budget, Invoicing, and Contractor Payment. **Contractor recognizes and understands those anticipated funds for 2023 are not guaranteed and is subject to LTAC recommendation and BOCC approval.**

1. Compensation

Payment to the Contractor for services rendered under this contract shall be as set forth in Exhibit B. Where Exhibit B requires payments by Lewis County, payment shall be made on a reimbursement basis. Reimbursement claims be supported by and at a minimum include: itemized receipts, copies of invoices paid, sample program or marketing materials, and any other documentation to describe use of Lodging Tax dollars, as well as an explanation of costs, itemized receipts, cancelled checks/bank statements and/or billing invoices. The requestor shall ensure ample information/documentation is included to support individual reimbursement claims. Claims shall include two signatures of personnel authorized by the organization to sign claims submitted to the County. Additional clarification and specific uses must also comply with the Lewis County Purchasing and Reimbursement Guidelines for Lodging Tax Grant Recipients.

Costs allowable under this contract are actual expenditures according to an approved budget up to the maximum amount stated above. The Contractor shall use federal cost principles specified in OMB Circular A-110 “Cost Principles Applicable to Grants, Contracts and other Agreements” with non-profit organizations as applicable. The Contractor shall include this last paragraph in any subcontracts.

The County may withhold reimbursement payment if the Contractor fails to submit required invoices and supportive documentation to the County. The Contractor’s failure to submit invoices as specified is grounds for the County to terminate the contract as provided herein.

2. Invoice Timeframe

The Contractor shall submit invoices to the County Contract Officer identified herein or to other such person identified by the County Contract Officer by the 10th of each month.

3. Eligible Use of Funds

Funding awarded under this contract may only be used for activities described in Exhibit A.

4. Duplicate Payment

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract or other source.

5. Audit

i. General Requirements:

The Contractor is to procure audit services based on the following guidelines:

- a. The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractor also maintains auditable records.

- b. The Contractor is responsible for any audit exceptions incurred by its own organization or that of its subcontractor. The County reserves the right to recover from the Contractor all disallowed costs resulting from the audit.
 - c. As applicable, the Contractor shall be required to have an audit and must ensure all audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); including, but not limited to, the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.
 - d. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to County requests for information or corrective action concerning audit issues within thirty (30) days of the date of request
- ii. State Fund Requirements:
Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:
- a. Contractor agency name
 - b. State program name
 - c. BARS account number
 - d. County
 - e. County Contract number
 - f. Contract award amount including amendments (total Contract award)
 - g. Current year expenditures
- iii. If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.
- iv. The Contractor shall include the above audit requirements in any subcontracts.
- v. In all cases, the Contractor's financial records must be available for review by County.
- vi: Audit requirements - OMB 2 CFR, Part 200, Subpart F (A-133) for federal funds

6. Future Non-Allocation of Funds

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

7. Errors and Omissions Uncompensated

In the event of any errors or omissions by the Contractor in the performance of any work required under this contract, the Contractor shall make any and all necessary corrections without additional compensation.