

**PROFESSIONAL SERVICES AGREEMENT
FOR
TOURISM PROMOTION (LODGING TAX) SERVICES**

This Professional Services Agreement ("Agreement") is effective as of the date of the last authorizing signature affixed hereto. The parties ("Parties") to this Agreement are the City of Olympia, a Washington municipal corporation ("City"), and Hands On Children's Museum, a Washington corporation ("Contractor").

A. The City seeks the temporary professional services of a skilled independent contractor capable of working without direct supervision, in the capacity of tourism promotion; and

B. The Contractor has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Contractor shall provide the services more specifically described in Exhibit "A," attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted practices for other similar services, and when and as specified by the City's representative.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than December 31, 2014 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City.

4. Compensation.

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed Sixty Thousand and No/100 Dollars (\$60,000).

4.2 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form

specified by the City, and the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such voucher or invoice. Final invoices, along with any required reports, must be submitted to the City by December 31, 2014 to avoid loss of funding.

4.3 Contractor Responsible for Taxes. The Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Compliance with Laws.

Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

6. Warranty.

The Contractor warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Olympia by obtaining a City of Olympia business registration.

7. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Contractor may be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

8. Indemnification.

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the Contractor, its partners, shareholders, agents, employees, or by the Contractor's breach of this

Agreement. Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs, and the indemnification and agreement to defend and hold harmless contained herein expressly includes any and all claims by employees, subcontractors, and assignees of Contractor or for which Contractor would otherwise have immunity under the Worker's Compensation Act or any similar law in the absence of Contractor's waiver of such immunity herein. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.

8.2 City Indemnification. The City agrees to indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

9. Equal Opportunity Employer.

A. In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

B. In the event of Contractor's noncompliance or refusal to comply with the above nondiscrimination plan, this Contract may be rescinded, canceled, or terminated in

whole or in part, and the Contractor may be declared ineligible for further contracts with the City. The Contractor, shall, however, be given a reasonable time in which to correct this noncompliance.

C. To assist the City in determining compliance with the foregoing nondiscrimination requirements, Contractor must complete and return the *Statement of Compliance with Non-Discrimination* attached as Exhibit C. If the contract amount is \$50,000 or more, the Contractor shall execute the attached Equal Benefits Declaration - Exhibit D.

10. Confidentiality.

All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Breach of confidentiality by Contractor will be grounds for immediate termination.

11. Insurance.

The Contractor shall carry, as a minimum, the following insurance in such forms and with a carrier rated A.M. Best "A:VII":

11.1 Workers' Compensation. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

11.2 Commercial General Liability Insurance. Commercial general liability insurance with limits of liability not less than \$1,000,000 per occurrence, and \$2,000,000 in the general aggregate, for bodily injury, including personal injury or death, products liability and property damage. The commercial general liability insurance shall also include the following coverages:

- A. Products and Completed Operations Liability;
- B. Automobile Liability, including coverage for owned, non-owned, leased, or hired vehicles;
- C. Stop Gap or Employers Contingent Liability.

11.3 Automobile Liability Insurance. Automobile liability insurance with a combined single limit of liability not less than \$1,000,000 for bodily injury (including personal injury or death) and property damage.

11.4 Professional Liability Insurance. Professional liability insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limits, for damages sustained by reason of or in the course of operation under this Agreement, whether occurring by reason of acts, errors or omissions of the Contractor.

11.5 Certificates of Insurance. The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s). The insurance provided to the additional insured shall be

primary. Contractor shall provide certificates of insurance and an Additional Insured endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after forty-five (45) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

11.6. Insurance Limits. The insurance limits stated above are not intended to be an indication of exposure nor are they limitations on indemnification.

11.7 Expiration/Termination of Insurance. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

12. Work Product.

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Services shall belong to the City. At the termination or cancellation of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

13. Treatment of Assets.

A. Title to all property furnished by the City shall remain in the name of the City.

B. Title to all nonexpendable personal property and all real property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the City, or if appropriate, the state or federal department supplying funds therefor, upon delivery of such property by the vendor. If the Contractor elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Contractor. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.

C. Nonexpendable personal property purchased by the Contractor under the terms of this Contract in which title is vested in the City shall not be rented, loaned or otherwise passed to any person, partnership, corporation/association or organization without the prior expressed written approval of the City or its authorized representative, and such property shall, unless otherwise provided herein or approved by the City or its authorized representative, be used only for the performance of this Contract.

D. As a condition precedent to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City, the Contractor agrees to execute such security agreements and other documents as shall be necessary for the City to perfect its interest in such property in accordance with the "Uniform Commercial Code--Secured Transactions" as codified in Article 9 of Title 62A, the Revised Code of Washington.

E. The Contractor shall be responsible for any loss or damage to the property of the City including expenses entered thereunto which results from negligence, willful misconduct, or lack of good faith on the part of the Contractor, or which results from the failure on the part of the Contractor to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City in like condition to that in which it was furnished or purchased, fair wear and tear excepted.

F. Upon the happening of loss or destruction of, or damage to, any City property, the Contractor shall notify the City or its authorized representative and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the City all property of the City within thirty (30) days after rescission, termination or completion of this Contract unless otherwise mutually agreed upon by the parties.

14. Books and Records.

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

15. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to continue the Agreement after the end of the current fiscal period, and this Agreement will automatically terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

16. General Provisions.

16.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior

agreements shall be effective for any purpose.

16.2 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

16.3 Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

16.4 Assignment. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

A. If the Contractor desires to assign this Contract or subcontract any of its work hereunder, the Contractor shall submit a written request to the City for approval not less than fifteen (15) days prior to the commencement date of any proposed assignment or subcontract.

B. Any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Contract.

C. Any technical/professional service subcontract not listed in this Contract, which is to be charged to the Contract, must have prior written approval by the City.

D. The City reserves the right to inspect any assignment or subcontract document.

16.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

16.6 Attorney Fees. In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party.

16.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

16.8 Governing Law. This Agreement shall be made in and shall be governed by

and interpreted in accordance with the laws of the State of Washington.

16.9 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.

16.10 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

16.11 Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

16.12 Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement.

16.13 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

16.14 Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

16.15 Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

16.16 Venue. All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Thurston County, Washington, Superior Court.

16.17 Ratification. Any work performed prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

16.18 Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

A. By signing the agreement below, the Contractor certifies to the best of its knowledge and belief, that it and its principles:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

B. Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

CITY OF OLYMPIA

By: _____

Jay Burney, Assistant City Manager

P.O. Box 1967

Olympia WA 98507-1967

Date of Signature: _____

APPROVED AS TO FORM:

City Attorney

I certify that I am authorized to execute this contract on behalf of the Contractor.

Hands On Children's Museum _____
[Enter Name of Contractor]

By: _____
(Signature)

(Printed Name)

Its: _____
(Title)

(Address)

(Phone)
Date of Signature: _____

Exhibit A
Statement of Work

Tourism Promotion – Hands On Children’s Museum, contract amount not to exceed \$60,000

To fulfill the terms of its Lodging Tax funded Agreement with the City of Olympia, the Hands On Children’s Museum (Agency) will provide the following service to promote Olympia and attract and welcome tourists during 2014:

1. Marketing and promotion of the Museum and the 2014 Sand in the City event including some or all of the following methods designed to attract and welcome tourist to Olympia,; print, radio, direct mail, rack cards, online advertising, social media, and banners.
2. Agency will provide an online link to Olympia lodging establishments and/or the Olympia VCB on its website.

No agency staff time is eligible for reimbursement.

The City shall reimburse Agency the costs to provide the tourism promotion services listed above in an amount not to exceed the actual expense incurred by Agency for said services upon submittal to the City of:

- An itemized invoice for the services;
- Photocopy or digital copy of third party vendor invoices and the Agency’s cancelled check(s) or checking account statements reflecting payment of third party vendor services and supplies necessary to provide the services, or other proof of payment acceptable to the City;
- Supporting documentation of the promotional work product, such as copies of the brochures and posters and a description of how and to whom they were distributed;
- A report summarizing the services provided and documenting the economic impact of the contracted tourism promotion services in a format acceptable to the City.

The total reimbursement from the City to the Hands On Children’s Museum to fulfill the terms of this Agreement shall not exceed \$60,000.

MAIL INVOICE TO
City of Olympia
Attn: Connie Cobb
P.O. Box 1967
Olympia WA 98507-1967

Exhibit B
Invoice

BILLING PERIOD: _____ INVOICE AMOUNT: \$ _____

AGENCY NAME: Hands On Children's Museum

ADDRESS: 414 Jefferson St NE Olympia WA 98501

SUBSCRIBED this _____ day of _____, 2014.

Signed _____ for
Hands On Children's Museum.

Title: _____

Services Rendered:

Invoice Requirements

Please provide an itemization of services provided. If the invoice includes staff time, list hours per project, hourly rate, and amount billed. Attach to this invoice copies of invoices/statements and cancelled checks (or other payment documentation acceptable to the City) for services purchased by the Agency 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 Thurston County.

Exhibit C
**STATEMENT OF COMPLIANCE WITH
NON-DISCRIMINATION REQUIREMENT**

The Olympia City Council has made compliance with the City's *Non-Discrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies and their employees understand and carry out the City's non-discrimination policy. Accordingly, each City contract for services contains language that requires an agency to agree that it shall not discriminate against an employee or client on the grounds of race, creed, color, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to employees and clients.

Hands On Children's Museum affirms compliance with the City of Olympia's non-discrimination ordinance and contract provision by **two or more of the following actions:**

Non-discrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).

What type, and how often? _____

Non-discrimination provisions are posted on applications for service.

Non-discrimination provisions are posted on the agency's web site.

Non-discrimination provisions are included in human resource materials provided to job applicants and new employees.

Non-discrimination provisions are shared during meetings.

What type of meeting, and how often? _____

If, in addition to two of the above methods, you use other methods of providing notice of non-discrimination, please list:

By signing, I acknowledge compliance with the City of Olympia's non-discrimination ordinance.

Failure to implement the measures specified above constitutes a breach of contract

(Signature)

(Date)

EXHIBIT D (page 1 of 2 pages)
EQUAL BENEFITS COMPLIANCE DECLARATION

Contractors on City contracts estimated to cost \$50,000 or more are required to comply with Olympia’s Equal Benefits Ordinance, and must complete both pages of this Equal Benefits Compliance Declaration. **Please note:** No City contract can be executed until the contractor has completed this Declaration and submitted it to: City of Olympia Executive Office, PO Box 1967 Olympia WA 98507-1967.

SECTION 1: Contractor Information

Name of Contractor: _____ Contact Person: _____

Phone Number: _____ Fax: _____ Email: _____

Approximate Number of Employees in the U.S.: _____ Project #: _____

SECTION 2: Compliance with Equal Benefits Ordinance

1. Does the contractor have any employees? YES NO

If the answer to Question 1 is “NO”, the contractor qualifies for **Option C** on Page 2 of this Declaration.

If the answer to Question 1 is “YES”, continue to Question 2.

2. a. Does the contractor provide, or offer access to, health insurance benefits to employees, or to the spouses of employees?*

YES NO

b. Does the contractor provide, or offer access to, health insurance benefits to employees, or to the domestic partners of employees?*

YES NO

* (Please Note: for 2(a) and (b), the answer must be “YES” even if the employees must pay for some or all of the cost of spousal or domestic partner benefits.)

If the answers to both Questions 2(a) and 2(b) are “NO”, the contractor qualifies for **Option B** on Page 2 of this Declaration.

If the answer to either Question 2(a) or 2(b) is “YES”, continue to Question 3.

3. BENEFITS PROVIDED

If the contractor provides employee health insurance benefits, please indicate so on the list below. If the contractor provides equal benefits, for each “Yes” marked in one column, there should be a corresponding “Yes” marked in the other column.

EMPLOYEE BENEFIT	FOR SPOUSES		FOR DOMESTIC PARTNERS	
Health Care	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Dental Care	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Vision Care	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO

If the answers to Question 3 indicate that the contractor provides equal benefits, the contractor will be in compliance with the Equal Benefits Ordinance and qualifies for **Option A** on Page 2 of this Declaration.

If the answers to Questions 3 for any listed benefits are “YES” in the spouse column and “NO” in the domestic partner column, continue to Question 4.

EXHIBIT D (page 2 of 2 pages)

EQUAL BENEFITS COMPLIANCE DECLARATION

4. Does the Contractor provide a cash equivalent of insurance benefits to the domestic partners of employees?

YES NO

If the answer to Question 4 is “YES,” the Contractor qualifies under **Option D** on Page 2 of this Declaration.

If in response to Question 3 for any listed benefit both a “YES” and a “NO” answer have been given, and in response to Question 4 the contractor DOES NOT provide a cash equivalent, the contractor is not in compliance with the Equal Benefits Ordinance.

EQUAL BENEFITS COMPLIANCE DECLARATION

I, _____, on behalf of Hands On Children’s Museum, declare that said
(Name)
Contractor complies with the Equal Benefits Ordinance by:

(Choose ONE of the following)

Option A

Offering equal benefits, as defined by the Equal Benefits Ordinance, to employees with spouses and employees with domestic partners.

Option B

Offering benefits neither to the spouses nor to the domestic partners of employees.

Option C

Having no employees.

Option D

Offering a cash equivalent.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at Olympia, Washington.

Signature

Name (please print)

Title

Contractor Tax Identification Number