

# WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2018-357

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	Twh	11/02/18	<div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">RECEIVED</div> <div style="font-size: 1.2em; font-weight: bold; margin-top: 10px;">NOV 27 2018</div> <div style="font-size: 1.1em; font-weight: bold; margin-top: 10px;">WHATCOM COUNTY COUNCIL</div>	12/04/18	Finance/Council
Division Head:					
Dept. Head:					
Prosecutor:	CDQ	11/6/18			
Purchasing/Budget:	BB	11/6/18			
Executive: <i>TUS</i>	<i>[Signature]</i>	11.27.18			
<b>TITLE OF DOCUMENT:</b> Whatcom Events – Ski to Sea Contract					
<b>ATTACHMENTS:</b>					
<ol style="list-style-type: none"> <li>1. Contract</li> <li>2. Memo</li> </ol>					
SEPA review required?    (    ) Yes    (    ) NO SEPA review completed?    (    ) Yes    (    ) NO			Should Clerk schedule a hearing ?    (    ) Yes    (    ) NO Requested Date:		
<b>SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)</b>					
Executive Louws requests your consideration and approval of the 2019 contract for services agreement between Whatcom County and Whatcom Events in support of marketing and promotion of the Ski to Sea, Tour de Whatcom and Mt. Baker Hill Climb Races as recommended by the Lodging Tax Advisory Committee and presented for Council approval.					
<b>COMMITTEE ACTION:</b>			<b>COUNCIL ACTION:</b>		
<b>Related County Contract #:</b>		<b>Related File Numbers:</b>		<b>Ordinance or Resolution Number:</b>	
Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: <a href="http://www.co.whatcom.wa.us/council">www.co.whatcom.wa.us/council</a> .					



## MEMORANDUM

**TO:** Jack Louws, County Executive  
**FROM:** Tawni Helms, Administrative Coordinator  
**RE:** Whatcom Events  
**DATE:** November 2, 2018

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Enclosed are two (2) originals of a Contract for Services between Whatcom County and Whatcom Events for your review and signature.

▪ **Background and Purpose**

Whatcom Events has received Lodging Tax funding for the purposes of supporting the marketing efforts of Whatcom Events for the Ski to Sea, Tour de Whatcom and Mt. Baker Hill Climb Races to promote tourism.

▪ **Funding Amount and Source**

Funding in the amount of \$40,000 will come from the Convention Center Fund as recommended by the Lodging Tax Advisory Committee and presented for approval to Whatcom County Council.

▪ **Differences from Previous Contract**

No substantive changes.

Please contact Tawni Helms at extension 5208, if you have any questions or concerns regarding the terms of this agreement.

Encl.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

201811014

<b>Originating Department:</b>	<b>Executive Office</b>
<b>Contract or Grant Administrator:</b>	<b>Tawni Helms</b>
<b>Contractor's / Agency Name:</b>	<b>Whatcom Events</b>
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?    If yes, grantor agency contract number(s): _____    CFDA#: _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Is this contract grant funded?    If yes, Whatcom County grant contract number(s): _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Is this contract the result of a RFP or Bid process?    Contract _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____    Cost Center: <u>141</u>	
Is this agreement excluded from E-Verify?    No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form. If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input checked="" type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. <input type="checkbox"/> Interlocal Agreement (between Governments).	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>40,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	<b>Council approval required</b> for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1.Exercising an option contained in a contract previously approved by the council. 2.Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3.Bid or award is for supplies or equipment included approved in the budget. 4.Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: Whatcom Events has received Convention Center funding for the purposes of supporting marketing efforts for the Ski to Sea race, Tour de Whatcom and Mt. Baker Hill Climb.	
Term of Contract: <u>January 1, 2019</u>	Expiration Date: <u>December 31, 2019</u>

<b>Contract Routing:</b>	1. Prepared by: <u>T. Helms</u>	Date: <u>11/02/18</u>
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: <u>Stannett</u>	Date: <u>11/02/18</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: <u>11-9-18</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>11-9-18</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**CONTRACTOR  
ORIGINAL**

**CONTRACT FOR SERVICES  
Whatcom Events**

Whatcom County Contract No.

201811014

Whatcom Events, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 7,
- Exhibit A (Scope of Work), p. 8,
- Exhibit B (Compensation), p. 9,
- Exhibit C (Certificate of Insurance), p. 10,
- Exhibit D (Sample Survey), p. 11.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of January, 2019, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of December, 2019.

The general purpose or objective of this Agreement is to: support the marketing efforts for the promotion of the Ski to Sea race, Tour de Whatcom and Mt. Baker Hill Climb, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

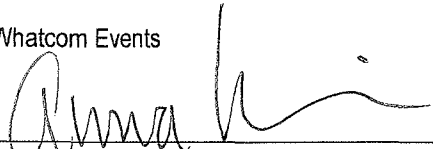
The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 40,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**CONTRACTOR:**

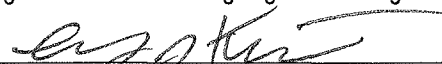
Whatcom Events

  
 \_\_\_\_\_  
 Anna Rankin, Race Director

STATE OF WASHINGTON )  
 )  
 COUNTY OF Whatcom ) ss.

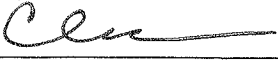
On this 1 day of Nov, 2018, before me personally appeared Anna Rankin to me known to be the Race Director of Whatcom Events and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



  
 \_\_\_\_\_  
 NOTARY PUBLIC in and for the State of Washington, residing at  
Bellingham. My commission expires 7/7/2019.

**WHATCOM COUNTY:**

**Approved as to form:**

 11/6/18  
Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
  ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at  
\_\_\_\_\_. My commission expires \_\_\_\_\_.

**CONTRACTOR INFORMATION:**

Whatcom Events

Anna Rankin, Race Director

Address:  
2227 Queen Street, Suite 6  
Bellingham, WA 98229

Mailing Address:  
same

Contact Name: Anna Rankin

Contact Phone: 360-746-8861

Contact FAX: N/A

Contact Email: anna@skitosea.com

## GENERAL CONDITIONS

### **Series 00-09: Provisions Related to Scope and Nature of Services**

#### 0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

### **Series 10-19: Provisions Related to Term and Termination**

#### 10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

#### 10.2 Extension: Not Applicable

#### 11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

#### 11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

#### 11.3 Termination for Public Convenience:

The County may terminate the Agreement 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 Agreement 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. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

### **Series 20-29: Provisions Related to Consideration and Payments**

#### 20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate

documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. 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 Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards: Not Applicable

**Series 30-39: Provisions Related to Administration of Agreement**

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any 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 employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 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 any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.2 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 supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs 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:  
A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.  
B. 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.

32.1 Confidentiality: Not Applicable

33.1 Right to Review:  
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:  
The Contractor shall carry for the duration of this Agreement commercial general liability insurance with the following minimums:  
Property Damage - \$500,000.00 per occurrence;  
General Liability & Bodily injury- \$1,000,000.00 per occurrence.

A Certificate of insurance that also identifies the County as an additional insured is attached hereto as Exhibit "C". This insurance shall be considered as primary and non-contributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

34.2 Industrial Insurance Waiver:  
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:  
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:  
The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.



Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest: Not Applicable

37.1 Administration of Contract:

This Agreement 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. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Tawni Helms, Administrative Coordinator  
Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

**Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes**

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 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.

41.2 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 parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**EXHIBIT "A"**  
(SCOPE OF WORK)

Whatcom Events will use tourism promotion funds to:

1. Regionally promote Whatcom County as a key athletic race destination for three major events:
  - a. Ski to Sea (including the junior race and the big race)
  - b. Tour de Whatcom Bike Race
  - c. Marketing efforts will target and attract visitors from Seattle, Vancouver, BC and Oregon.
2. Marketing/promotion includes online print and radio advertising, social media and licensed video race footage.
3. Travel to Sports Expos for Ski to Sea Race event promotion.

Promotional materials regarding the proposed activity must mention that it is made possible in part by a Tourism Promotion Grant from Whatcom County. The scale of this credit should be commensurate with the County's level of financial support. It should include the name and logo of the County. It is not expected that this credit be displayed in all materials, but at a minimum it should be placed in such documents as programs and annual reports.

Within 30 days after signature execution of this Agreement, the Festival shall submit a concise plan for the collection of the required survey data (the "Survey Plan") to the Whatcom County Executive Office. The Survey Plan shall outline statistically defensible methods of survey protocol that will provide data about the event attendees. The survey questions outlined in the Survey Plan shall be substantially similar to those illustrated in Exhibit C, which is attached hereto and incorporated herein.

Within 30 days after the end of the contract term, the Festival shall submit a final project report (the "Final Project Report") detailing:

- How the evaluation criteria were met by the event
- What elements worked well and which did not.
- Modifications, if any, planned for future activities.
- Survey results that were collected according to the Survey Plan.
- The number of out-of-County visitors that stayed in Whatcom County lodging establishments.

*Failure to complete and deliver the Final Project Report and the Survey Plan in a timely manner may render recipient ineligible for future funding.* Pursuant to RCW 67.28.1816, recipients of lodging tax funds must provide the following information:

*The estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event or tourism-related facility owned or sponsored by a nonprofit organization or local jurisdiction.*

**EXHIBIT "B"**  
(COMPENSATION)

Maximum consideration for this contract shall be \$40,000. ***The Contract Number shall be included on all billings or correspondence.*** Including mileage billable at the IRS rate for services rendered as described in Exhibit A (Scope of Work).

**Allowable Expenses include the following:**

**Promotional/marketing expenses:**

**Print, online and radio advertising, signage, graphic design/IT, licensed video footage** **\$37000.**

**Travel costs to attend Sports Expos** **\$ 3,000.**

**TOTAL:** **\$40,000.**

Whatcom Events will submit invoices detailing allowable expenditures as outlined in Exhibit A to the Whatcom County Executive's Office. Payment is for reimbursement only and copies of receipts must be attached to invoices. Payment will be made no more than one time per month.

Contractor will also provide Whatcom County with a copy of all brochures and advertisements included with invoices.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/26/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Commercial Lines - 877-281-5690 (CA DOI # 0G13561)  Safehold Special Risk, Inc.  999 3rd Ave, Suite 1000 Seattle, WA 98104	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>INSURED</b> Whatcom Events  2227 Queen Street #6  Bellingham, WA 98229	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> AIX Specialty Insurance Company	<b>NAIC #</b> 12833
	<b>INSURER B:</b> _____	
	<b>INSURER C:</b> _____	
	<b>INSURER D:</b> _____	
<b>INSURER E:</b> _____		
<b>INSURER F:</b> _____		


**COVERAGES**                      **CERTIFICATE NUMBER:** 12870471                      **REVISION NUMBER:** See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	X		L12 A631279 03	05/06/18	05/06/19	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 LIQUOR LIABILITY AGG \$ 1,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED    RETENTION \$						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below    N/A						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The Certificate Holder is Additional Insured when required by written contract, agreement, lease, or permit as respects liability arising from the operations of the Named Insured.  
Ski to Sea: May 27th, 2018

**CERTIFICATE HOLDER**                      **CANCELLATION**

Whatcom County 311 Grand Avenue, Ste 108 Bellingham, WA 98225	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**EXHIBIT 'D'**  
(Sample Survey)

**Sample Survey Questions for Attendees/Participants of Attractions, Festivals and Events**

1. What is your zip code?
2. How did you hear about this event? (i.e. newspaper, radio, internet, magazine, word of mouth, other)
3. How many nights away from home, if any, are you spending in Whatcom County?
4. Will you stay overnight? If so, where?  
 Hotel or motel  
 Campground  
 Friend/Relative  
 Not staying overnight
5. How much money have you spent in Whatcom County as a visitor including any food, gas lodging, tickets, etc.?  
 \$0-\$25  
 \$25-\$50  
 \$50-\$100  
 \$100-\$200  
 \$200 or over

**Sample Survey Plan:**

Your Survey Plan should answer the following questions regarding your survey methodology:

1. How do you intend to distribute your survey to your event participants?
2. What incentives or methods will you use to ensure you obtain sufficient data on your event participants?
3. Who will be responsible for collecting your data?
4. Any other details regarding your survey methods or alternative methods you may use obtain relevant data regarding your event participants.