



Snohomish County Evergreen State Fair Park
 14405 179th Avenue SE, Monroe, WA 98272-1149 (360) 805-6700
 www.EvergreenFair.org

2023 Evergreen State Fair
8/24/2023 – 9/4/2023
FAIR SERVICES AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington and owner of the Evergreen State Fair Park (the “County”), and

Account name:	Minotaur Mazes (Kelly Fernandi)
Account Address:	912 NW 63rd St
Account City, State, Zip:	Seattle, WA, 98107
Contact name if different than above:	
Contact Phone Number:	(206) 276-8209
Email Address:	kelly@minotaurmazes.com

(the “Contractor”).

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to memorialize the services and/or performance that the Contractor agrees to produce at the Evergreen State Fair in Monroe, Washington, described as follows:

Exhibit: Water's Extreme Journey (interactive maze exhibition)

1. Provide the Water's Extreme Journey traveling exhibition (size 54'3"x30'7") (the 'Exhibit') for use at the Evergreen State Fair, during these dates and times:

August 24 - 29: 10:30am-9:00pm

Fair is Closed on Wed. Aug. 30

August 31-September 3: 10:30am-9:00pm

September 4: 10:30am-7:00pm

2. Provide technician and all set up and tear down crew between August 14-23 and September 5-8, 2023.

3. Fair will provide staff to assist with 53-foot trailer, and forklift for inbound and outbound shipping of the Exhibit.

4. Provide promotional images for promotion of Water's Extreme Journey. Minotaur has the right to approve all artwork.

5. Exhibit includes Habitat Rooms; Wyland Marine Life Artist Exterior Graphics; and Interactives. A/V: Ambient Soundtrack.

6. Contractor will be responsible for their Exhibit and will provide 1 on site staff members during public hours listed in #1. Fair has security before and after public hours in the building until building is open or closed. Exhibit is self-guided. Staff person will provide oversight, crowd-control and maintenance as needed. Staff person may take appropriate breaks as needed.

7. Insurance as stated in this agreement.

In furtherance of Contractor's performance under this Agreement, the County grants the Contractor a license to use the building, location, or space provided in this Section 1. The Contractor has inspected the licensed building, location, or space, including any structure, grounds, and access thereto, and accepts the same in the condition in which they now are. The County shall not be bound by any warranty, representation, or condition regarding the licensed building, location, or space except as stated in this Agreement.

The services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

2. Term of Agreement. This Agreement shall be effective upon 1st date of service as outlined in section 1. This agreement shall end on last date of service as outlined in section 1.

3. County agrees to provide:

1. Indoor space in Event Center to include Exhibit (approx. 1700 sq ft); Storage 10' x 55' Indoors next to Exhibit for crates; and Ingress and Egress space for attendees.

2. Passes: 4 Season Admission and 4 Season Parking passes for use during August 24-September 4.

3. All promotional materials will state: "Water's Extreme Journey is created by Minotaur Mazes, a Seattle-based leader in interactive educational maze exhibits".

4. Approve sponsorship within 2 business days.

5. Provide fair visitor attendance figures within 30 days after the Fair and provide

any demographics or feedback.

6. The county is self-insured and can provide letters of self-insured.

7. Electricity, Water, and stanchions for crowd control.

8. Compensation:

Set Up Staff, Inbound Shipping and Deposit: August 3, 2023 (\$15,500)

Balance for Tear Down Staff, Exhibit Rent: September 4, 2023 (\$25,000)

Total: \$40,500

3a. Access: County shall provide access to the fairgrounds to Contractor per Fair passes listed in Section 3 for service/performance.

3b. Compensation.

The County will pay the Contractor for services as defined Negotiated. In addition, the County shall provide passes for admittance, which are considered part of the Contractor's compensation. No separate claims for reimbursement of overhead or expenses will be allowed under this Agreement. The County will deliver a check for payment upon termination of this Agreement. Total charges under this Agreement, all fees and expenses included, shall not exceed \$40,500.00.

4. Independent Contractor. The Contractor will perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The Contractor shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the Contractor and not the County. The Contractor has the express right to direct and control the Contractor's activities in providing the Services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

6. Amendments. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required

for the execution of this Agreement.

7. County Contact Person. The assigned contact person for the County for this Agreement shall be:

Name: Debbie Donk
Title: Fair Programs Supervisor
Department: Department of Conservation and Natural Resources
Telephone: 360.805.6705
Email: Debbie.Donk@co.snohomish.wa.us

8. County Review and Approval. The County reserves the right to review Contractor's work. Upon such review, if the County determines, in its sole discretion, that Contractor's work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor's work when so directed by the County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor's conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain all records related to performance under this Agreement. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

11. Hold Harmless/Indemnification.

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

12. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an “occurrence” form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County’s recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition;

(ii) Automobile Liability: (Required if using automobiles in the course of your work). \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers’ Compensation: To meet applicable statutory requirements for workers’ compensation coverage of the state or states of residency of the workers providing services under this Agreement;

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers’ compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, “CG 20 26 07/04” or its equivalent is required.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall

not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to

discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

16. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, epidemic, riot, sabotage, epidemic, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), then both party's obligations with respect to the performance of this Agreement shall be excused and neither Party shall have any liability to the other in connection therewith. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

17. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 18 of this Agreement.

18. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If the Contractor breaches any of its obligations hereunder, and fails to cure the same immediately upon notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the services accepted by the County in accordance with Sections 3 and 8 hereof.

c. In the event that the Evergreen State Fair does not occur and is otherwise cancelled, in the County's sole discretion, before its opening day, this Agreement shall terminate and the County will have no obligation to compensate the Contractor for the canceled services.

d. Termination by the County hereunder shall not affect the rights of the County as against the Contractor provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 18, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due the Contractor (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or

credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the Agreement.

e. If this Agreement is terminated or cancelled, the Contractor shall return intact all Fair admission passes, parking, and other event passes to the County. The Contractor will be invoiced for the face value of any Fair admission passes, parking, or other event passes not returned or not returned intact.

19. Notices. All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County, DCNR
6705 Puget Park Drive
Snohomish, WA 98296
Attention: Tom Teigen, Director

If to the Licensee: Minotaur Mazes (Kelly Fernandi)
912 NW 63rd St
Seattle, WA, 98107

The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

20. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County

releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

21. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

22. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

23. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

24. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

25. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

26. Severability. Should any clause, phrase, sentence or paragraph of this agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

27. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

28. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

29. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

SNOHOMISH COUNTY:

CONTRACTOR:

E-SIGNED by Kelly Fernandi
on 2023-06-28 00:24:56 GMT

Date

Date

Reviewed by DPA:
Rebecca J. Guadamud 02/08/23
Deputy Prosecuting Attorney

Reviewed by Risk Management:

COUNCIL USE ONLY	
Approved	<u>8/8/2023</u>
ECAF #	<u>2023-0808</u>
MOT/ORD	<u>Motion 23-331</u>