

DESTINATION MARKETING AND TOURISM DEVELOPMENT AGREEMENT

THIS AGREEMENT dated for reference the 15 day of MAY, 2017

BETWEEN:

THE DISTRICT OF TOFINO
PO Box 9
121 Third Street
Tofino, British Columbia
V0R 2Z0

(the "District")

AND:

TOURISM TOFINO
PO Box 1140
Tofino, British Columbia
V0R 2Z0

(the "DMO")

GIVEN THAT:

- A. The Province of British Columbia approved Order in Council No. 814 on the 30th of November 2016;
- B. District of Tofino Municipal and Regional District Tax Levy Bylaw No. 1225, 2016 (the "Bylaw"), provides for an additional tax of 3% to be imposed under Section 240 of the *Provincial Sales Tax Act* on the purchase price of accommodation sold in the District of Tofino;
- C. The Bylaw authorizes the District to spend the revenue collected from the additional tax on tourism marketing, programs and projects;
- D. The DMO has agreed to provide tourism marketing, programs and projects on behalf of the District;
- E. The DMO is the sole provider of Visitor Services in Tofino and has agreed to develop and construct a Visitor Centre on behalf of the District.

IN CONSIDERATION of the terms, conditions, consideration warranties, and representations contained herein, the District and the DMO agree as follows:

1. TERMS AND CONDITIONS

- 1.1 Commencing on the 1st day of June 2017, to and including the 31st day of May 2022, the DMO shall provide tourism marketing, programs and projects on behalf of the District.
- 1.2 The DMO will develop and approve a procurement policy prior to the execution of the Agreement.
- 1.3 The DMO will present a financial management plan, in writing, to the District demonstrating a higher level of financial supervision and internal controls prior to execution of the Agreement.
- 1.4 The District will forward to the DMO the additional tax received under the Bylaw in accordance with this Agreement.

- 1.5 The DMO will receive the additional tax (the "Funds") from the District in accordance with this Agreement.
- 1.6 The DMO will use the Funds received by the District for the purpose of providing tourism marketing, programs and projects in accordance with the terms and conditions of the *Municipal and Regional District Tax Program Requirements – Fall 2015*.
- 1.7 The DMO agrees that .8 percentage points of the additional 1% of the Municipal and Regional District Tax received during the term of the Agreement will be used to develop and construct a Visitor Centre.
- 1.8 The DMO will keep all undisbursed Funds in a separate interest-bearing account. All interest earned on the Funds shall form part of the Funds for the purpose of providing tourism marketing, programs and projects.
- 1.9 The DMO will keep adequate accounting records each year of all Funds received and retain those records for the period of time required by Canada Revenue Agency.
- 1.10 The District acknowledges that the fiscal period of the DMO is January 1st to December 31st.
- 1.11 Revenues earned from activities and projects financed by the Funds shall form part of the Funds for the purpose of providing tourism marketing, programs and projects.
- 1.12 The DMO and the District will not, without prior written consent of the other party, incur any expense in the name of or for which the other party will be required to reimburse the other, or be liable to any other person, except pursuant to the terms of this Agreement. Neither party will have authority to contract or incur any liability in the name of the other party.
- 1.13 The DMO will expend all Funds by May 31, 2022, and will not incur any liability for which the Funds are to be utilized beyond May 31, 2022. Any Funds unspent at that time will be remitted to the District except in the event where the Agreement is being renewed.

3. PAYMENT

- 3.1 The District will transfer the Funds received from the Province of British Columbia to the DMO within 21 days of receipt of the Funds by the District. The District will provide a monthly comparison of the Funds to prior years.

4. REPORTING

- 4.1 The DMO is required to submit annual audited financial statements to the District on or before April 30th commencing with an audit of the 2017 fiscal year and ending with an audit of the 2022 fiscal year.
- 4.2 The DMO is required to present the annual audited financial statements to the District on or before April 30th of each year commencing with the 2017 audited financial statements.
- 4.3 The DMO is required to submit Annual Performance Reports and Financial Reports, in accordance with the *Municipal and Regional District Tax Program Requirements – Fall 2015*, to the District by April 1st of each year.
- 4.4 The DMO is required to submit a One-Year Tactical Plan, in accordance with the *Municipal and Regional District Tax Program Requirements – Fall 2015*, to the District by October 1st of each year and present it to District Council at the first Council meeting in October. The One-Year Tactical Plan should be made available to tourism industry stakeholders.

- 4.5 The DMO is required to provide the District with the information requested to report annual statistics to the Province in regards to tourism marketing, programs and projects. The District is required to report each year on a variable date and will request the information from the DMO as soon as the reporting requirements are received from the Province.

5. COMPLIANCE WITH REGULATIONS

- 5.1 The DMO will in all respects abide by and comply with all applicable lawful rules, regulations and bylaws of the federal, provincial or local governments, or any other governing body whatsoever, in any manner affecting the Funds.

6. ACCESS

- 6.1 A representative of the District may, upon notice to the DMO, inspect the accounting records during normal business hours to review, copy or audit the same and such representative shall be provided with access to all accounts and records related to this Agreement.

7. INSURANCE AND INDEMNITY

- 7.1 The DMO covenants to obtain and keep in force during the term of this Agreement at its sole expense, insurance satisfactory to the District protecting the District and the DMO (without any rights of cross-claim or subrogation against the District) against claims for personal injury, death, property damage or third party or public liability claims arising out of, in connection with, or in any way related to works undertaken pursuant to this Agreement, in an amount not less than \$5,000,000.00 and with the District named as additional insured.
- 7.2 The DMO shall indemnify and save harmless the District from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributed to any breach of any provision of this Agreement to be performed by the DMO and the officials, servants, employees, members, agents, and contractors of the DMO.
- 7.3 The DMO shall submit such policy or policies or certified copies thereof and any renewals thereof to the District for review and approval together with proof of payment of premiums thereof. Every policy shall contain a provision that written 30-day notice of cancellation shall be given to the District.

8. DEFAULT AND TERMINATION

- 8.1 The parties hereto agree that either party may terminate this Agreement by giving the other party 90 days written notice of its intention to do so provided that in the event that the DMO has incurred a contractual obligation or other liability pursuant to an approved budget extending more than 90 days past the date that any such written notice is received by the DMO from the District, then in such an event, the DMO shall continue to provide Funds for the purposes of such contractual obligation or other liability and the provisions of this Agreement shall continue to apply with respect to such contractual obligation or other liability.
- 8.2 Subject to Section 8.1, the District may terminate this Agreement if at any time, in the opinion of the District, acting reasonably, the DMO has used or dispersed Funds in a manner contrary to the Bylaw and such expenditure was not authorized pursuant to an approved budget.
- 8.3 Subject to Section 8.1, upon termination of this Agreement, any unspent Funds received shall be returned to the District.

9. DISPUTE RESOLUTION

- 9.1 The parties will endeavor to resolve any disputes by negotiations; however, if a dispute is not resolved by negotiation within 10 days of commencing negotiations, the DMO and the District will forthwith submit the dispute to a mediator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on a mediator, a mediator will be appointed by the British Columbia International Arbitration Centre.
- 9.2 If mediation pursuant to Section 9.1 does not result in a resolution of the dispute within 10 days of the commencement of mediation, the parties will forthwith submit the dispute to arbitration by a single arbitrator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on an arbitrator, an arbitrator will be appointed by the British Columbia International Arbitration Centre. The determination of the arbitrator will be conclusive and binding on the parties. The *Commercial Arbitration Act of British Columbia* or successor legislation will apply to the arbitration.

10. NOTICES

- 10.1 Any notice or other writing required or permitted to any of the parties shall be sufficiently given if delivered personally, by courier to the address specified on the first page of this Agreement. Such address may be changed from time to time by either party giving notice as above provided.

11. ASSIGNMENT

- 11.1 This Agreement shall not be assigned by either party without the prior written approval of the other.

12. ENTIRE AGREEMENT

- 12.1 This Agreement shall be deemed to constitute the entire Agreement between the District and the DMO hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation hereto made by any party to this Agreement.

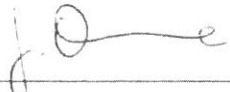
13. SEVERANCE

- 13.1 If any portion of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, the illegal or invalid portion must be severed and the decision that it is illegal or invalid does not affect the validity of the remainder of this Agreement.

14. INTERPRETATION

- 14.1 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 14.2 This Agreement constitutes the entire Agreement amongst the parties and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.
- 14.3 Whenever the singular or masculine is used in, the same shall be construed as meaning the plural or feminine or by the body politic or corporate where the context of the parties hereto so require.
- 14.4 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

SIGNED by the DISTRICT OF TOFINO:)



_____)

Josie Osborne, Mayor)


_____)

Robert MacPherson, CAO)

SIGNED by TOURISM TOFINO,)


_____)

J.J. Belanger, Chairperson)


_____)

Kirsten Soder, Executive Director)

