

REGIONAL TOURISM SERVICES – CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference this 26th day of November, 2023

BETWEEN:

COWICHAN VALLEY REGIONAL DISTRICT

175 Ingram Street
Duncan, BC V9L 1N8

(the "CVRD")

OF THE FIRST PART

AND:

TOURISM COWICHAN SOCIETY

(S-0045488)

Unit #2 - 1934 Boxwood Road
Nanaimo, BC V9S 5Y2

(**"Tourism Cowichan"**)

OF THE SECOND PART

W H E R E A S:

- A. The CVRD is authorized by its Bylaw No. 2352 – Contribution for Regional Tourism Service Establishment Bylaw, 2002 ("**Bylaw No. 2352**") to contribute to an organization providing regional tourism services.
 - B. Tourism Cowichan is incorporated under the *Society Act* (British Columbia) with a mandate to promote and market the Cowichan Valley Regional District as a tourist destination.
 - C. The CVRD wishes to enter into an agreement with Tourism Cowichan under which an annual contribution made by the CVRD under the terms of Bylaw No. 2352 will be used by Tourism Cowichan to provide the regional tourism services described in Schedule "A" to this Agreement ("**Regional Tourism Services**").
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NOW THEREFORE the CVRD and Tourism Cowichan, in consideration of the mutual promises exchanged under this Agreement, agree as follows:

1.0 TERM

The term of this Agreement is for a period of two (2) years ("Initial Term"), commencing on October 1, 2023 and ending on December 31, 2025, with an option to extend the Agreement on the same terms and conditions for an additional two (2) year term ("Subsequent Term") upon mutual agreement. However, the CVRD shall not incur any liability should it choose not to exercise the option to extend the Contract.

2.0 FINANCIAL CONTRIBUTION

- 2.1** Under the authority of Bylaw No. 2352, but subject to the terms and conditions of this Agreement and subject to annual budget approval, the CVRD agrees to make a contribution of up to One Hundred and Twenty Thousand (\$120,000.00) Dollars to Tourism Cowichan during each year of the Term (the "**Annual Contribution**"), including any applicable taxes such as but not limited to Goods and Services Tax, for the purpose of providing Regional Tourism Services in accordance with the terms and conditions of this Agreement.
- 2.2** The Annual Contribution will be in accordance to the CVRD Recovery of General Government Administration Charges Policy.
- 2.3** The Annual Contribution will be paid to Tourism Cowichan Society once a year, in accordance with the financial policies of the CVRD.
- 2.4** The Annual Contribution shall be considered by the CVRD each year upon review of the Tourism Cowichan Annual Work Plan, and upon approval of the CVRD's annual budget.

3.0 ANNUAL WORK PLAN, REPORT AND BUDGET

- 3.1** Tourism Cowichan shall, during each year of the Term, submit to the CVRD for its consideration and approval as part of the CVRD's annual budget approval process, an annual work plan and budget (the "**Annual Work Plan**") which must include:
 - (a) An Annual Performance Report and Financial Report on the Regional Tourism Services provided by Tourism Cowichan during the previous year, on the use of the Annual Contribution;
 - (b) Tourism Cowichan's One-Year Tactical Plan and Budget for the provision of Regional Tourism Services for the forthcoming year of the Term; and,
 - (c) The Annual Financial Statements of Tourism Cowichan, as approved by Tourism Cowichan's Board of Directors.
- 3.2** It is expected that items 3.1 (a) and 3.1 (b) are received for approval by October 1st, of each year of this term, and that item 3.1(c) is received by the CVRD by July 31st of the following year.

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- 3.3** The CVRD may withhold the Annual Contribution in whole or in part until it is satisfied with and approves the Annual Work Plan.

4.0 TOURISM COWICHAN'S DUTIES AND RESPONSIBILITIES

4.1 Tourism Cowichan shall:

- (a) Use the Annual Contribution solely for the purpose of providing Regional Tourism Services in accordance with the terms and conditions of this Agreement, and the Annual Work Plan as approved by the CVRD;
- (b) Obtain and maintain in force throughout the Term the insurance required under Schedule "B" to this Agreement;
- (c) Not subcontract any of its obligations under this Agreement without the CVRD's prior written consent;
- (d) Provide written notification to the CVRD of any agreements to subcontract any Regional Tourism Services, along with a copy of any such agreement and associated insurance documents per Schedule "B" to this agreement;
- (e) Not commit the CVRD to the payment of any money to any person, firm or corporation, without the CVRD's prior written consent;
- (f) Keep proper and accurate books of account and records of any and all monies received and disbursed in the provision of the Regional Tourism Services and make those books of account and records available for inspection and audit by the CVRD or its authorized representatives upon request, provided that any such audit shall be conducted at the CVRD's sole cost;
- (g) Comply at all times throughout the Term with all applicable standards, rules, regulations, requirements and codes of practice prescribed under any federal, provincial or local government statute, regulation, or bylaw relating in any respect to Tourism Cowichan's provision of Regional Tourism Services;
- (h) Present to the CVRD Board at a scheduled Board or Committee of the Whole meeting at least once per year with an update on current activities; use of the Annual Contribution; reporting on key performance metrics tied to Schedule "A ", membership/stakeholder levels, and the state of the tourism sector in the region.

5.0 INTELLECTUAL PROPERTY

- 5.1** In order to assist Tourism Cowichan in its provision of the Regional Tourism Service and to ensure brand continuity, the CVRD may from time to time, in writing, permit Tourism Cowichan to use intellectual property owned by the CVRD including but not limited to trade names, brands, images, internet domains, trade-marks, or official marks that have been developed or used by the CVRD in the promotion of regional tourism (the "**CVRD Intellectual Property**").
- 5.2** Any intellectual property, which may include but shall not be limited to trade names, brands, images, internet domains, trade-marks, or official marks, produced or acquired by Tourism Cowichan using the Annual Contribution (the "**New Intellectual Property**") shall be accessible to the CVRD at no cost.
- 5.3** Tourism Cowichan shall not alter, or grant sub-licenses for the use of, any CVRD Intellectual Property without the CVRD's prior written approval, which approval may be withheld in the CVRD's sole discretion.
- 5.4** Upon the expiry or earlier termination of this Agreement, Tourism Cowichan must return to the CVRD all CVRD Intellectual Property and New Intellectual Property and any copies, including reproducible copies of the same.

6.0 TOURISM COWICHAN REPRESENTATIONS AND WARRANTIES

- 6.1** Tourism Cowichan represents and warrants to the CVRD that:
- (a) It is a society duly incorporated and in good standing under the laws of British Columbia; and
 - (b) Tourism Cowichan has sufficient staff, facilities, and appropriate resources available to enable it to provide the Regional Tourism Services in accordance with this Agreement.

7.0 INDEMNIFICATION

- 7.1** Tourism Cowichan shall release, indemnify and keep indemnified the CVRD, its elected and appointed officials, officers, and employees of and from all claims, losses, damages, actions, causes of action, expenses and costs (including costs on a solicitor and own client basis) in any way arising from, in connection with or attributable to the negligence, fault or breach of this Agreement on the part of Tourism Cowichan, its employees, agents, contractors and sub-contractors.

8.0 TERMINATION AND END OF TERM

- 8.1** This Agreement shall terminate automatically if proceedings are commenced for the dissolution, liquidation or winding up of Tourism Cowichan, or if Tourism Cowichan becomes insolvent or is assigned into bankruptcy.
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- 8.2** If Tourism Cowichan fails to perform or is in default of any of its obligations under this Agreement and such failure continues for fourteen (14) days following delivery of written notice from the CVRD specifying the failure or default and requiring the remedy thereof, the CVRD may terminate this Agreement immediately and without further notice to Tourism Cowichan.
- 8.3** Either the CVRD or Tourism Cowichan may terminate this Agreement, without cause, at any time by giving not less than one hundred and eighty (180) days' written notice to the other party.
- 8.4** If this Agreement is terminated:
- (a) Tourism Cowichan shall provide the CVRD with a full accounting of all expenditures of the Annual Contribution to the effective date of termination;
 - (b) Tourism Cowichan shall promptly return to the CVRD any part of the Annual Contribution that has not been spent, and that is not required to fulfil legal obligations that Tourism Cowichan has incurred with the approval of the CVRD;
 - (c) As requested by the CVRD, Tourism Cowichan shall assign to the CVRD any New Intellectual Property not yet assigned to the CVRD;
 - (d) As requested by the CVRD, acting reasonably, and following consultation and discussion with Tourism Cowichan, Tourism Cowichan shall assign to the CVRD any service contracts for the provision of Regional Tourism Services that Tourism Cowichan has entered into with the approval of the CVRD.
- 8.5** At the end of the Term, if this Agreement is not renewed:
- (a) Tourism Cowichan shall provide the CVRD with a full accounting of all expenditures of the Annual Contribution during the final year of the Term;
 - (b) Tourism Cowichan shall promptly return to the CVRD any part of the Annual Contribution that has not been spent, and that is not required to fulfil legal obligations that Tourism Cowichan has incurred with the approval of the CVRD.
 - (c) As requested by the CVRD, Tourism Cowichan shall assign to the CVRD any New Intellectual Property not yet assigned to the CVRD;
 - (d) As requested by the CVRD, acting reasonably, and following consultation and discussion with Tourism Cowichan, Tourism Cowichan shall assign to the CVRD any service contracts for the provision of Regional Tourism Services that Tourism Cowichan has entered into with the approval of the CVRD.

9.0 CONFIDENTIALITY

- 9.1** Tourism Cowichan shall not disclose to any person any confidential information of the CVRD that it receives for the purpose of providing Regional Tourism Services under this Agreement, except with the express written approval of the CVRD.

10.0 NOTICE

- 10.1** Any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) If delivered at the time of delivery;
- (b) If delivered by email or fax to the email or fax numbers set out below, upon acknowledgement of receipt by the recipient; and
- (c) If mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

If to the CVRD: 175 Ingram Street
Duncan, BC, V9L 1N8
Attention: Clayton
Postings
Email:
clayton.postings@cvrd.bc.ca
Fax: 250.746.2621

If to Tourism Cowichan: Unit #2 - 1934 Boxwood Road
Nanaimo, BC, V9S 5Y2
Attention: Bob Day
Email: bob@lcfm.ca

11.0 TIME

- 11.1** Time is of the essence of this Agreement.

12.0 BINDING EFFECT

This Agreement will be to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

13.0 SURVIVAL OF CERTAIN COVENANTS

- 13.1** The covenants and agreements contained in sections 7.1 and 9.1 shall survive the expiry or earlier termination of this Agreement and those sections are severable for that purpose.

14.0 RELATIONSHIP

- 14.1** Nothing in this Agreement shall be construed so as to create a partnership or joint venture between Tourism Cowichan and the CVRD, nor to render the relationship between Tourism Cowichan and any of its employees, agents or contractors on the one hand, and the CVRD on the other, to be that of employee and employer.

15.0 NO ASSIGNMENT

- 15.1** Tourism Cowichan shall not assign its interest in this Agreement or any right, benefit or obligation conferred or imposed hereunder, in whole or in part, whether by operation of law or otherwise, except with the prior written consent of the CVRD, which may be withheld for any reason.

16.0 WAIVER

- 16.1** The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

17.0 FURTHER ASSURANCES

- 17.1** Each of the parties hereto covenants and agrees to execute such further and other documents, and do such further and other things as may be necessary to implement and carry out the intent of this Agreement.

18.0 ENTIRE AGREEMENT

- 18.1** This Agreement constitutes the entire agreement between the parties with respect to the matters herein and may not be modified except by subsequent agreement in writing.

19.0 LAW APPLICABLE

- 19.1** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

20.0 AMENDMENT

- 20.1** This Agreement may not be modified or amended except by the written agreement of the parties.

21.0 COUNTERPART

- 21.1** This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one

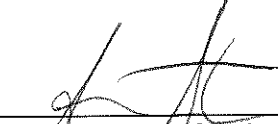
and the same Agreement.

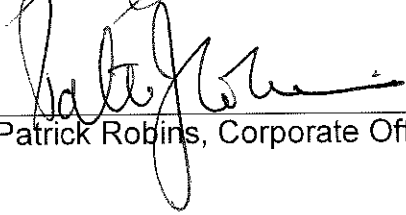
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IN WITNESS HEREOF the CVRD and Tourism Cowichan have executed
this Agreement as of the day, month and year first above written.

COWICHAN VALLEY REGIONAL DISTRICT, by its)
authorized signatory(ies):)

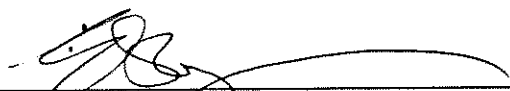

_____)
Aaron Stone, Chair)


_____)
Patrick Robins, Corporate Officer)
_____)
_____)

TOURISM COWICHAN, by its authorized)
signatory(ies):)

Bob K. Day)
_____)

Bob Day, Interim Chair)
_____)
_____)
_____)


_____)
Leif Bogwald, Vice Chair

SCHEDULE "A"

REGIONAL TOURISM SERVICES

- Tourism Cowichan staff shall work collaboratively with CVRD's Economic Development Cowichan (EDC), and other local government and First Nations staff to ensure that the tourism sector promotes livability, affordability, and environmental sustainability in the region, and that actions align with the CVRD Corporate Strategic Plan and CVRD and municipal Official Community Plans.
- Tourism Cowichan shall promote, manage, and develop tourism and tourism opportunities in the CVRD in the manner described in the Municipal and Regional District Tax Program 5 Year Tactical Plan and the Annual Work Plan as approved by the CVRD. Such services may include but are not necessarily limited to:
 - Ongoing research, planning and evaluation of regional tourism marketing strategies;
 - Brand development and brand refreshment;
 - Seeking out and securing additional funding for Regional Tourism Services;
 - Communicating with and seeking input and investment from stakeholders in the tourism industry, including municipalities, First Nations, and businesses;
 - Provide appropriate financial contributions to support CVRD Visitor Centres;
 - Provision of tourism development fund;
 - Digital marketing:
 - Website;
 - Social media and online advertising;
 - Communication;
 - Digital assets;
 - Festivals and Events Marketing;
 - Publications including a refreshed tourism guide;
 - Print and Broadcast Advertising;
 - Digital and Billboard Signage;
 - Co-operative marketing campaigns;
 - Cooperation and collaboration with other tourism-based organizations;
 - Travel media and travel trade relations, including FAM tours;
 - Industry development and training.
- Tourism Cowichan shall take the leading role in supporting tourism product development in the CVRD, in consultation with EDC staff. Such services include but are not limited to:
 - Meet quarterly with CVRD's Economic Development Division staff to share data and insights, set priorities and targets, and report on key performance indicators (KPI) around tourism product development initiatives;

SCHEDULE "A"

- Investigate opportunities to encourage investment in new and/or renovated hotels, motels, and other tourist and tourism industry staff accommodations in the region, while seeking to avoid potential conflict with housing availability and affordability concerns;
- Align any grant programs offered by Tourism Cowichan, to expand beyond marketing, to facilitate the creation of new and enhanced tourism products through support for tourism studies, programs, and initiatives.

SCHEDULE "B"

INSURANCE

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

- (a) Commercial General Liability (CGL), on an occurrence basis, for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000 per occurrence and including products and completed operations liability. The policy is to include the following:
 - The CVRD as an additional insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract;
 - Contractual liability coverage;
 - Cross-liability and severability of interests clause;
 - Employers liability coverage;
 - 30 day written notice of cancellation, termination or material change;
 - Tenants legal liability coverage (if applicable and with suitable sub-limits);
 - Non-owned automobile coverage with blanket contractual coverage for hired automobiles.

WORKSAFEBC

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the CVRD upon request. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Supplier further agrees to indemnify the CVRD for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with any workplace safety and insurance board or body.

