

# TOURISM PROMOTION AGREEMENT WITH THE CITY OF OCEAN SHORES

THIS AGREEMENT is made by and between the City of Ocean Shores, a non-charter code City of the State of Washington, hereinafter referred to as "City," and \_\_\_\_\_, hereinafter referred to as "Entity," jointly referred to as "Parties."

## DEFINITIONS

**1. Tourism Promotion.** "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

**2. Fund(s).** "Fund(s)" is defined as any amount of compensation derived from the lodging tax monies of the City of Ocean Shores which is allocated to Entity for tourism promotion.

IN CONSIDERATION of the terms and conditions contained herein, the Parties covenant and agree as follows:

**1. Purpose of Agreement.** The purpose of this Agreement is for City and Entity to promote tourism in the Ocean Shores. City agrees to make funds available to Entity for the purpose of tourism promotion in an effort to attract visitors and create business and revenue in the City of Ocean Shores.

**2. Administration.** The City Finance Director shall administer and be the primary contact for Entity regarding terms of this Agreement. For good cause, as solely determined by City, City may direct that Entity is no longer entitled to the use of said funds for tourism promotion and terminate this Agreement.

**3. Representations.** Entity shall use the funds received from City for tourism promotion and advertising solely for the purposes and in accordance with the proposal submitted by Entity to the City, attached as Exhibit 1 and incorporated herein by reference. Entity shall perform the services and work set forth in the proposal and promptly cure any failure in performance.

City has relied upon the representations made by Entity in the proposal. By execution of this Agreement, Entity represents that the funds will be used for tourism promotion as defined by this Agreement in accordance with all current laws, rules and regulations. No substitutions of purpose or use of the funds shall be made without the written consent of City. City shall make decisions and carry out its other responsibilities in a timely manner.

**4. Reporting.** RCW 67.28.1816 as amended includes reporting requirements for the Entity and the City on the use of funds distributed pursuant to this Agreement and the estimated and actual number of increased visitors. These reports are required to be provided from the Entity to City and from the City to the Joint Legislative Audit and Review Committee (JLARC). The following provisions allow the Entity and City to meet their respective requirements under RCW 67.28.1816.

A. **Estimated Increase in Visitors.** As part of its LTAC application (Exhibit 1), the Entity shall provide the City with an estimate of the number of visitors resulting from the use of funds under this Agreement. The estimated number of visitors provided shall be consistent with the Entity's proposal to the City for lodging tax funds, to the extent such estimates were provided therein.

B. **Final Report on Increase in Visitors.** Upon completion of the tourism promotion as specified in Exhibit 1 of this Agreement, but no later than the last working day in September of the year funding was received, the Entity shall complete a report substantially in the form of Exhibit 2 and provide to the City a final report of the number of visitors resulting from the use of funds under this Agreement and expenditures and uses of funds under this Agreement. The numbers of visitors shall be based on an actual count, or if it is not practical to make an actual count, a good faith best-estimate of the number of visitors resulting from the use of funds under this Agreement. The final report shall describe the methods used to determine the actual number of visitors, or in the event such numbers were determined from an estimate, the methods used to determine such estimates.

C. **City Reporting.** The City shall provide the Entity's estimates in Exhibit 1 and final report in Exhibit 2 to JLARC as part of its annual report.

**5. Modifications.** City may modify this Agreement and order changes in the work whenever necessary or advisable. Entity will accept modifications consistent with state and local law when directed orally or in writing by the City Finance Director or designee.

**6. Term of Contract.** This Agreement shall be in full force and effect upon full execution, and shall remain in effect until terminated either by Entity expending the allocated City funds or completion of the tourism promotion activities.

Either Party may terminate this Agreement by 30 days written notice to the other Party or with no notice upon a determination by the City that the funds will not be or have not been used for the purpose as stated in this Agreement. In the event of such termination, City shall cease and desist from distributing any further funds to Entity for work performed or otherwise.

**7. Compensation.** City agrees to pay Entity an amount not to exceed \$\_\_\_\_\_, as agreed to by the City Council.

**8. Payment.** City shall pay the Entity upon presentation of an invoice to City. Entity shall be responsible for showing that the City funds were used for tourism promotion. The proof of expenses shall be forwarded to the Finance Director, as part of Exhibit 2, at the below stated address no later than the last working day of September in the year that funds were awarded.

City reserves the right to withhold payment of funds under this Agreement which is determined in the reasonable judgment of the City Finance Director or designee to be noncompliant with the scope of work, City standards, and City ordinances, or federal or state law.

**9. Performance Bond.** If the Funds received are equal or greater than Forty Thousand dollars (\$40,000) Entity shall provide to the City a 100% performance bond within 10 days after execution of this agreement for the amount of the Funds awarded by the City. The bond must be issued by a bonding company acceptable to the City. The Funds received from the City shall not be used to pay the premium for said bond.

**10. Notice.** Notice shall be given in writing as follows:

**TO CITY:**

Name: Finance Director  
Phone Number: 360-940-7493  
Address: PO Box 909  
Ocean Shores, WA 98569  
Email: afolkers@osgov.com

**TO ENTITY:**

Name:  
Phone Number:  
Address:  
Email:

**11. Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws, ordinances, and regulations.

**12. Relationship of the Parties.** It is understood, agreed and declared that Entity, its employees, agents and assigns shall be an independent contractor and not the agent or employee of City, that City is interested in only the results to be achieved, and that the right to control the particular manner, method, and means in which the services are performed is solely within the discretion of Entity. Any and all employees who provide services to City under this Agreement shall be deemed employees solely of Entity. Entity shall be solely responsible for the conduct and actions of all employees of Entity under this Agreement and any liability that may attach thereto.

**13. Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of Entity's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls and record of matters covered by this Agreement for a period of three years from the date final payment is made hereunder.

**14. Insurance.** Entity shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Entity, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Entity shall obtain insurance of the types described below:

1. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. If use of vehicles pursuant to the Agreement is only incidental, and Entity will not transport any persons not directly related or affiliated with Entity, then Entity is only required to have automobile liability insurance to meet at least minimum Washington state requirements.

2. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. City shall be named as an additional insured under Entity's commercial general liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. Entity shall maintain the following insurance limits:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of no less than \$1,000,000 per accident. If Entity will not use its vehicles in the performance of this Agreement, automobile liability insurance is only required to meet Washington statutory minimum requirements.

2. Commercial general liability insurance shall be written with limits no less than \$1,000,000 for each occurrence, and \$2,000,000 for general aggregate.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions for automobile liability, professional liability and commercial general liability insurance:

1. Entity's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Entity's insurance and shall not contribute with it.

2. Entity shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Entity.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Evidence of Coverage. As evidence of the insurance coverages required by this Agreement, Entity shall furnish acceptable insurance certificates to the City at the time Entity returns the signed Agreement, which shall be Exhibit 4. The certificate shall specify

all of the parties who are additional insureds, and shall include applicable policy endorsements, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. Entity shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

F. Failure to Maintain Insurance. Failure on the part of the Entity to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving at least five days' written notice to Entity to cure the breach, immediately terminate the Agreement or, at the City's discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Entity from the City.

G. City Full Availability of Entity's Insurance Limits. If the Entity maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by the Entity, irrespective of whether such limits maintained by the Entity are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Entity.

**15. Indemnification and Hold Harmless**. Entity shall, at its sole expense, defend, indemnify and hold harmless City and its officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, attorney's fees and costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors or omissions in the services provided by Entity, Entity's agents, subcontractors, subconsultants and employees to the fullest extent permitted by law, subject only to the limitations provided below.

Entity's duty to defend, indemnify and hold harmless City shall not apply to liability for damages arising out of such services caused by or resulting from the sole negligence of City or City's agents or employees pursuant to RCW 4.24.115.

Entity's duty to defend, indemnify and hold harmless City against liability for damages arising out of such services caused by the concurrent negligence of (a) City or City's agents or employees, and (b) Entity, Entity's agents, subcontractors, subconsultants and employees, shall apply only to the extent of the negligence of Entity, Entity's agents, subcontractors, subconsultants and employees.

Entity's duty to defend, indemnify and hold City harmless shall include, as to all claims, demands, losses and liability to which it applies, City's personnel-related costs, reasonable attorneys' fees, and the reasonable value of any services rendered by the office of the City Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

Entity specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or

benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that Entity's waiver of immunity under this provision extends only to claims against Entity by City, and does not include, or extend to, any claims by Entity's employees directly against Entity.

Entity hereby certifies that this indemnification provision was mutually negotiated.

**16. Waiver.** No officer, employee, agent or other individual acting on behalf of either Party has the power, right or authority to waive any of the conditions or provisions of this Agreement. A waiver in one instance shall not be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

**17. Assignment and Delegation.** Neither Party shall assign, transfer or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without first obtaining the written consent of the other Party.

**18. Subcontracts.** Except as otherwise provided herein, Entity shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of City.

**19. Confidentiality.** Entity may, from time to time, receive information which is deemed by the City to be confidential. Entity shall not disclose such information without the prior express written consent of the City or upon order of a Court of competent jurisdiction.

**20. Jurisdiction and Venue.** This Agreement is entered into in Grays Harbor County, Washington. Disputes between the City and Entity shall be resolved in the Superior Court of the State of Washington in Grays Harbor County. Notwithstanding the foregoing, Entity agrees that it may, at the City's request, be joined as a party in any arbitration proceeding between the City and any third party that includes a claim or claims that arise out of, or that are related to Entity's services under this Agreement. Entity further agrees that the Arbitrator(s) decision therein shall be final and binding on Entity and that judgment may be entered upon it in any court having jurisdiction thereof.

**21. Cost and Attorney's Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to its attorney's fees and costs of such litigation (including expert witness fees).

**22. Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified or altered except in writing signed by the Parties hereto.

**23. Anti-kickback.** No officer or employee of City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this

Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from any person with an interest in this Agreement.

**24. Severability.** If any section, sentence, clause or phrase of this Agreement should be held to be invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other section, sentence, clause or phrase of this Agreement.

**25. Exhibits.** Exhibits attached and incorporated into this Agreement are:

**Exhibit 1:** LTAC Application

**Exhibit 2:** Final Report on Number of Visitors

**Exhibit 3:** Insurance Certificates

The Parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF OCEAN SHORES**

**Entity:**

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
By:  
Its: Authorized Representative

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Angie Folkers, City Clerk

\_\_\_\_\_  
Brent Dille, City Attorney

Exhibit 1

ON FILE WITH CITY CLERK



Exhibit 2  
Final Report on Numbers of Visitors and Paid Room Nights

***Actual (or Estimated)***

Total Overall Attendance

Select the method used to determine the attendance from the chart below. \*\*

***Attendees who traveled 50 miles or more to attend***

Total

Of total, attendees who traveled from another state or country

Select the method used to determine the attendance from the chart below. \*\*

***Attendees who stayed overnight***

Paid Accommodations

Unpaid Accommodations

Select the method used to determine the attendance from the chart below. \*\*

***Paid Lodging Nights\****

*\*one lodging night = one or more persons occupying one room for one night*

Select the method used to determine the attendance from the chart below. \*\*

**\*JLARC defines the Paid Lodging Night as “One Lodging night = one or more persons occupying one room for one night”**

**\*\*Methods in determining actual or estimated number of visitors and/or paid room nights:**

**Direct Count:** Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.

**Indirect Count:** Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.

**Representative Survey:** Information collected directly from individual visitors/ participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.

**Informal Survey:** Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.

**Structured Estimate:** Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).

**Other:** (please describe)

Exhibit 2 - continued  
Use of Funds

Please complete the following table with amount of funds received under this Agreement, Entity matching amounts for the same event, festival, or purpose, and total amount spent for each category:

<b>CATEGORY</b>	<b>LTAC AMOUNT RECEIVED</b>	<b>ENTITY MATCH</b>	<b>TOTAL</b>
<b>To be filled out by Public/Municipal Agencies:</b>			
1. Municipality tourism marketing	\$	\$	\$
2. Municipality event and festivals	\$	\$	\$
3. Municipality facilities (operations and capital)	\$	\$	\$
<b>To be filled out by Non-Profit Agencies:</b>			
4. Non-municipal entities promoting and advertising tourism	\$	\$	\$
5. Non-municipal entities for marketing and operating events and festivals	\$	\$	\$
6. Non-municipal entities for operations of tourism-related facilities owned by non-profit organizations	\$	\$	\$
<b>TOTALS</b>	\$	\$	\$

Exhibit 2 – continued  
Use of Funds

Please describe how funds received under this Agreement were used:

**\*\*Attach proof of expenses**