

TILLAMOOK COUNTY

**AMENDMENT #3
GRANT AGREEMENT #5012**

**for
~~TOURISM PROMOTION and MARKETING SERVICES~~
DESTINATION MANAGEMENT AND COMMUNICATION SERVICES**

This Grant Agreement is made and entered into by and between Tillamook County, acting by and through its Board of Commissioners, hereinafter "County", and the Tillamook Coast Visitors Association doing business as Visit Tillamook Coast, acting by and through its Board, hereinafter "TCVA", hereinafter collectively, "the parties".

(~~Strike through text~~ indicates removals and *italicized text* indicates additions).

RECITALS

Whereas, in November 2013 the voters of Tillamook County approved a ballot measure authorizing a transient lodging tax (TLT) and creating a promotion and tourism fund under County Ordinance #74; and

Whereas, Ordinance #74 provides that seventy percent (70%) of the net revenue generated from the TLT shall be used to:

- (A) Fund tourism promotion or tourism-related facilities;
- (B) Finance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing; and

Whereas, in order to implement Ordinance #74, County enacted Ordinance #75 which contains administrative procedures, including provisions for the allocation of the promotion and tourism funds; and

Whereas, Ordinance #75 also provides that County may contract with a tourism promotion agency to allocate and distribute TLT funds for tourism promotion and marketing.

Whereas, Oregon Revised Statute 320.300 provides the following definitions:

- (A) "Tourism promotion" means any of the following activities:
 - Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;
 - Conducting strategic planning and research necessary to stimulate future tourism development;
 - Operating tourism promotion agencies; and
 - Marketing special events and festivals designed to attract tourists.

(B) "Tourism promotion agency" includes:

- An incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis.
- A nonprofit entity that manages tourism-related economic development plans, programs and projects.

Whereas, for the purpose of this Agreement the following is defined:

(A) "Net TLT Revenue" means seventy percent (70%) of the net revenue generated from the tax imposed by Ordinance #74.

Whereas, destination management, which is based on sustainable tourism principles, and defined by the United Nations World Tourism Organization, is:

- *Coordinating actions with the goal of controlling the economic, socio-cultural and environmental dimensions of a specific tourism region, which is carried out by local authorities and tourism stakeholders in partnership, following principles of good governance. It considers all the elements that make up a tourism destination, including local residents, businesses, attractions, amenities, access and messaging.*
- *Consistent with initiatives of Travel Oregon and Oregon Coast Visitors Association, and the objectives of the strategic plan of TCVA.*

WITNESSETH

NOW THEREFORE, IT IS HEREBY AGREED by and between the parties that the mutual promises of each party are given in exchange and as consideration for the promises of the other party.

Section 1.0 RIGHTS, DUTIES, AND AUTHORITIES OF TCVA

- 1.1 TCVA shall comply with ORS 320.300 to 320.350, Ordinance #74, Ordinance #75, and any amendments thereto, for the use and disbursement of TLT funds.
- 1.2 TCVA may fund any and only the tourism ~~promotion~~ activities defined in ORS 320.300 and initiatives outlined in an approved strategic plan of TCVA.
- 1.3 TCVA shall focus time and TLT fund expenditures on meeting its 'Three R's' goals:
 - 1.3.1 Return on Investment Goal: Increase visitor spending in businesses throughout the county and increase visitor appreciation for the natural resources and environment.
 - 1.3.2 Return on Relationships Goal: Help businesses and organizations achieve their goals and missions and upgrade services and knowledge.
 - 1.3.3 Return on Responsibility Goal: Establish Tillamook County as the 'coast that cares'.

- 1.4 TCVA shall develop and amend as necessary county-wide regional strategies for ~~tourism promotion and marketing~~ *destination management and communications*.
- 1.5 TCVA shall annually develop and implement a tourism ~~promotions~~-program designed to ~~promote-communicate~~ Tillamook County as a tourism destination with particular focus on the shoulder- and off seasons (October 1 – May 15).
- 1.6 In allocating TLT funds for ~~tourism promotion and marketing~~ *destination management*, TCVA shall give preference to collaborative proposals that are consistent with the approved strategies referenced in Section 1.11 of this Agreement and involve broad participation within the hospitality and tourism industry or other promotional proposals that embrace county-wide themes.
- 1.7 TCVA shall support the Tillamook County Pioneer Museum, Tillamook County Fairgrounds, and other key Tillamook County tourism facilities in implementing their promotion and marketing goals.
- 1.8 TCVA expenditures on lobbying or campaign financing are expressly prohibited.
- 1.9 TCVA shall consider using local vendors when applicable.
- 1.10 TCVA shall submit to the County Treasurer a detailed general ledger on a monthly basis.
- 1.11 TCVA shall prepare and present to County for approval an annual report that contains strategies and benchmarks for tourism promotions and marketing; its proposed budget for administration and overhead; the details concerning the allocations, the amounts and uses of TLT funds during the prior year; and account of TCVA's expenditures of TLT funds for administration and overhead; and the unexpended balance of TLT funds in the possession of TCVA.
- 1.12 At least semi-annually, including annual reporting, TCVA shall provide updates to County at one of its regularly scheduled and televised meetings on the progress and status of its work under this Agreement.
- 1.13 TCVA shall include within its annual budget adequate revenue and expenditure authority for the amount of TLT funds distributed under this Agreement as required by ORS 294.900 - 294.930. All such funds shall be subject to an audit, which may be requested by the County.
- 1.14 TCVA will follow best practices for contracting vendor services.
- 1.15 TCVA will hire, oversee, and manage the South County Tillamook Destination Manager, whose job description and workplan are attached as Exhibit A and incorporated herein. ~~TCVA and County will evaluate TCVA's administration of this position after one (1) year to determine if TCVA should continue administrative oversight or if oversight should be transferred to another entity.~~

Section 2.0 TCVA BOARD

- 2.1 Tillamook County Ordinance #75 requires the TCVA board to be comprised of transient lodging providers, citizens, members of tourism promotion agencies, and representatives from the tourism industry.
- 2.2 The TCVA Board shall include one representative from both unincorporated communities of Netarts-Oceanside and Pacific City.
- 2.3 The TCVA Board shall include one representative from the Tillamook County Board of Commissioners *to serve as ex-officio board member*.

Section 3.0 RIGHTS, DUTIES, AND AUTHORITIES OF COUNTY

- 3.1 County shall include within its annual budget adequate revenue and expenditure authority for the amount of TLT funds anticipated to be received for each fiscal year.
- 3.2 County retains the authority to expend TLT funds for promotion and marketing beyond the amount distributed to TCVA.
- 3.3 County shall appoint one member from the Tillamook County Board of Commissioners to serve as an ex-officio member of the TCVA Board.

Section 4.0 DISTRIBUTIONS OF TLT PROMOTION AND MARKETING FUNDS

County Fiscal Year 2019-2020

- 4.1 Under the provisions of this Agreement, in County fiscal year 2019-2020 County shall distribute to TCVA One Million One Hundred Two Thousand Five Hundred Dollars (\$1,102,500) of TLT funds.
- 4.2 On or before February 1, 2020, County will determine the amount of TLT funds to be distributed to TCVA for County fiscal year 2020-2021. Several factors will be considered in determining this distribution, including:
 - 4.2.1 The scope of work developed between County and TCVA;
 - 4.2.2 Recommendations in Future iQ's Strategic Vision and Action Plan for Tourism-Related Facility Investments report, scheduled for completion in June 2019;
 - 4.2.3 TCVA's new benchmarks for meeting their 'Three R's' stated in Section 1.3 of this Agreement; and
 - 4.2.4 TCVA's performance during the first term of this Agreement.
- 4.3 For County fiscal year 2019-2020, County shall provide to TCVA four (4) equal distributions of Two Hundred Seventy-Five Thousand Six Hundred Twenty-Five Dollars (\$275,625) each on or before May 31, August 31, November 30, and February 28.

County Fiscal Year 2020-2021

- 4.4 Under the provisions of this Agreement, in County fiscal year 2020-2021 County shall distribute to TCVA Six Hundred Fifty Thousand Dollars (\$650,000) of TLT funds. Of this distribution, Thirty-Five Thousand Dollars (\$35,000) shall be allocated to TCVA's GIS mapping and application project.
- 4.5 For budget planning purposes, on or before February 1, 2021, County will provide TCVA a projected amount of TLT funds to be distributed to TCVA for County fiscal year 2021-2022. Several factors will be considered in determining this distribution, including the aforementioned factors provided in Section 4.2 of this Agreement.
- 4.6 For County fiscal year 2020-2021, County shall provide to TCVA four (4) equal distributions of One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500) each on or before May 31, August 31, November 30, and February 28. This amount is subject to a reduction if projected revenues are not received.
- 4.7 Until further notice to County by TCVA, all TLT funds due to TCVA pursuant to this Agreement will be made by County check or ACH payable to Tillamook Coast Visitors Association.
- 4.8 In addition to the funding set forth in Section 4.6 of this Agreement, County will provide funds to fully support the South County Tillamook Destination Manager expenses including salary, benefits, office space rental, and travel per diem. County funding to support this position is not subject to a reduction pursuant to Section 4.6 of this Agreement.
- 4.9 In addition to the funding set forth in Section 4.6 of this Agreement, County will also provide \$28,427 for GIS wayfinding costs from 2020-2021 fiscal year for a Tillamook County Wellness project.

County Fiscal Year 2021-2022

- 4.10 *Under the provisions of this Agreement, in County fiscal year 2021-2022 County shall distribute to TCVA One Million Six Hundred Seventy-Five Thousand Four Hundred Ninety Dollars (\$1,675,490) of TLT funds. Of this distribution, Two Hundred Fifty-Two Thousand Five Hundred Dollars (\$252,500) shall be allocated to TCVA's South County Destination Management efforts.*
- 4.11 *For County fiscal year 2021-2022, County shall provide to TCVA four (4) equal distributions of Three Hundred Fifty-Five Thousand Seven Hundred Forty-Eight Dollars (\$355,748) each on or before May 31, August 31, November 30, and February 28. The remaining fund for South County Destination Management efforts shall be provided on a reimbursement basis.*
- 4.12 *For County fiscal year 2022-2023, TCVA shall submit its budget request to the County Treasurer by the Treasurer's deadline for the County Budget Committee's consideration.*

Section 5.0 INSURANCE

- 5.1 Each party agrees to maintain insurance sufficient to meet sums specified by ORS 30.

Section 6.0 LIABILITY; INDEMNIFICATION

- 6.1 Each party shall indemnify and hold harmless the other party from all claims, costs, damages, or expenses of any kind, including attorneys' fees and other costs and expenses of litigation, for personal or property damage arising out of that party's performance required by this Agreement. It is the intent of this section that each party assumes any and all liability for its respective torts, errors, and omissions.

Section 7.0 TERM

- 7.1 Unless otherwise terminated pursuant to the provisions of Section 8 of this Agreement, the term of this Agreement shall begin July 1, 2019 and shall continue in force and effect until June 30, ~~2022~~ 2027.
- 7.2 Prior to the term expiration, the parties may upon mutual consent modify this Agreement.
- 7.3 Prior to the term expiration, County may unilaterally modify any part of this Agreement as allowed by law. A modification shall not be in effect and enforceable until ninety (90) days after County provides TCVA with written notice of said modification.
- 7.4 Upon expiration of this term, County reserves the right to negotiate a new agreement with TCVA or solicit other promotion and marketing service providers.

Section 8.0 TERMINATION

- 8.1 This Agreement may be terminated without notice if:
- 8.1.1 The parties mutually consent to termination in writing.
- 8.2 This Agreement may be terminated by one of the parties with notice if any one of the following events occur:
- 8.2.1 Either party breaches any duty, term, or condition of this Agreement.
- 8.2.2 Either party commits a fraud or misrepresentation upon the other party.
- 8.2.3 Either party gives one hundred twenty (120) days' notice.
- 8.3 Visit Tillamook Coast Brand Ownership
- 8.3.1 Upon termination or expiration of this Agreement, TCVA agrees to legally transfer the Visit Tillamook Coast brand Trademark to County. TCVA shall complete said transfer to County no more than thirty (30) days after termination or expiration of this Agreement. Upon termination or expiration of this Agreement, TCVA releases all ownership interests or claims in the Visit Tillamook Coast brand Trademark.

Section 9.0 GENERAL PROVISIONS

9.1 Waiver; Modification

9.1.1 Failure by either party to enforce any provision of this Agreement does not constitute that party's continuing waiver of that provision, any other provision, or of the entire Agreement. The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except as authorized in Sections 7.2 and 7.3, or upon the written-signed consent of both parties.

9.2 Attorneys' Fees

9.2.1 Attorneys' fees, costs, and disbursements necessary to enforce this Agreement through mediation, arbitration, and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

9.3 Legal Representation

9.3.1 In entering into this Agreement, each party has relied solely upon the advice of its own attorney. Each party has had the opportunity to consult with counsel or now waives that right. Each party represents and warrants to the other that it is fully satisfied with the representation received from their respective attorneys.

9.4 Notices

9.4.1 Any notice required or permitted under this Agreement shall be in writing and deemed given when:

9.4.1.1 actually delivered, or

9.4.1.2 three (3) days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

9.5 Language

9.5.1 The headings of the Agreement paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine, and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

9.6 Integration

9.6.1 This Agreement supersedes all prior oral or written agreements between VTC and County regarding this matter. It represents the entire agreement between the parties. Time is of the essence in all terms, provisions, covenants, and conditions in this Agreement.

9.7 Savings

9.7.1 Should any clause or section of this Agreement be declared by a court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

9.8 Jurisdiction; Law

9.8.1 This Agreement is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the parties.

IN WITNESS WHEREOF, County and TCVA have executed this Agreement on the dates written below.

Dated this 17th day of June, 2021.

TILLAMOOK COAST VISITORS ASSOCIATION



Jim Prinzing, Chair

Dated this 23rd day of June, 2021.

BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

Aye Nay Abstain/Absent

Mary Faith Bell, Chair

___ ___ ___/___

David Yamamoto, Vice Chair

___ ___ ___/___

Erin D. Skaar, Commissioner

___ ___ ___/___

ATTEST: Tassi O'Neil, County Clerk

APPROVED AS TO FORM:

By: _____
Special Deputy

Joel W. Stevens, County Counsel