

2022 WHISTLER 2020 DEVELOPMENT CORPORATION OAP CONTRIBUTION AGREEMENT

THIS AGREEMENT is made as of the ____ th day of January, 2022

BETWEEN: RESORT MUNICIPALITY OF WHISTLER

4325 Blackcomb Way,
Whistler, BC, V8E 0X5
("RMOW")

AND: WHISTLER 2020 DEVELOPMENT CORPORATION

1616-808 Nelson Street, Box 12147 Nelson Square
Vancouver, BC, V6Z 2H2
("WDC")

WHEREAS:

- A. The RMOW is the local government and is responsible for the development and execution of programs, policies, and projects to ensure that Whistler is a vibrant and sustainable resort community in general, and in particular delivers ongoing management and execution of key community initiatives;
- B. WDC is a not for profit corporation, wholly owned by the RMOW. The WDC is responsible to provide, as a service on behalf of the Municipality, the design, financing, development, and construction of employee restricted housing in the Cheakamus Crossing neighbourhood;
- C. Consistent with the *Provincial Sales Tax Act*, the RMOW receives accommodation area tax revenue known currently as the *Municipal and Regional District Tax* (MRDT);
- D. In October 2018, the MRDT program was expanded to include the collection of fees from online accommodation providers. Proceeds from this tax revenue may be designated by the RMOW to support affordable housing initiatives;
- E. The RMOW has agreed to contribute its share of online accommodation provider revenues to the WDC, for the purposes of building employee restricted housing on Lot 1. The parties wish to enter into this Agreement to confirm the manner in which the online accommodation provider revenue is allocated and expended and such other terms and conditions as agreed upon.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS

1.1. Capitalized terms used herein and in the Recitals shall have the following meaning:

- a) "Act" means the *Provincial Sales Tax Act*, SBC 2012, c35, and any statutory amendments or successor enactments.
- b) "MRDT" means the accommodation area tax levied pursuant to the *Designated Accommodation Area Tax Regulations*, B.C. Regulation 93/2013 for the prescribed purpose of supporting investment in tourism marketing, projects and programs.
- c) "OAP" means the additional tax collected by the Province from online accommodation providers.
- d) "OAP Revenue" means the amount of OAP revenue that accrues to the RMOW in a calendar year.
- e) "Lot 1" refers to the Employee Restricted Housing development proposed for the site legally described as:
 - PID:** 031-508-502
 - Folio:** 008073.045
 - Legal:** LOT 1 DISTRICT LOT 8073 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP111931
 - LEGAL NOTATIONS: SUBJECT TO PROVISOS, SEE CROWN GRANT BA311771
- f) "Project Capital Plan" is the Plan submitted by WDC and approved by RMOW and forms part of this agreement.
- g) "Province" means the Government of British Columbia.
- h) "TW" means Tourism Whistler, a separate and precedent beneficiary of OAP Revenues.

2. OAP CONTRIBUTIONS

2.1. Subject to sections 2.3 and 2.4, the RMOW agrees to transfer the OAP Contribution to WDC as follows:

- a) The RMOW agrees to contribute to the WDC a sum equal to the amount of OAP Revenue it receives between the date of this agreement and March 31, 2023. Note that this RMOW OAP amount is equal to the total OAP Revenue received from the Province less the portion of OAP Revenue that is paid

separately to TW.

- b) Payments of MRDT from the province are generally received by the RMOW within 60 days following the end of each month. OAP Revenues are remitted quarterly for the preceding 3 months. Both parties acknowledge that the RMOW's receipt of three months' accumulated OAP Revenue will lag by 60 – 120 days beyond the end of the month in which that revenue was collected by the Province. The portion of MRDT identified as OAP ("OAP Revenue") is identified by the Province concurrent with this quarterly payment and shall be the singular source for the OAP amount.
- c) Notwithstanding the provincial payment timeline referenced in 2.1(b), the RMOW acknowledges that time is of the essence in the payment of OAP revenues between the organizations and will ensure that reasonable effort is made to minimize delays whenever possible.

2.2. Both parties agree that the amount in 2.1 will be invested to support the development and construction of employee restricted housing on Lot 1, a project consistent with the OAP program requirements and associated guidelines set out by the Provincial Government, and approved by the Province in 2018.

2.3. Both parties mutually recognize that long-term, stable funding of Employee Restricted Housing is critical to the success of the Whistler community in general, and both organizations in particular. In the event that the following occurs:

- a) if the Province changes the rates, criteria and/or eligibility of the OAP program through changes to the Provincial Sales Tax Act, Designated Accommodation Area Tax Regulation, then both parties will comply accordingly;
- b) if the Province reduces the OAP funding, then amounts due to WDC will decline accordingly, and as consistent with this agreement;
- c) if the RMOW does not receive any OAP revenue, then the RMOW will be under no obligation to pay any OAP transfers;

2.4. In the event that 2.3 a., 2.3 b., or 2.3 c. occurs, and either party would like to reconsider the terms of this agreement, then as soon as is reasonably possible both parties will commence, in good faith, a renegotiation of the Contribution Agreement.

3. Lot 1

3.1. Both parties agree to the importance of strong and effective planning, governance and controls. In addition to its ongoing responsibilities in adherence to its articles of incorporation and its fiduciary role as a Municipal Corporation, WDC will report quarterly on Lot 1 spending and construction progress to the RMOW.

3.2. WDC agrees and covenants that it will operate as would a prudent operator,

including a commitment to adhering to its overall Business Plan and the associated Project Capital Plan for Lot 1. Revisions to the Capital Plan will be considered by RMOW as necessary, with subsequent OAP contributions dependent upon and timing concurrent with revision approval.

3.3. For greater certainty, WDC acknowledges that this agreement is not intended to amend or alter the terms of any previous agreements between the parties.

4. ADDITIONAL COVENANTS

4.1. WDC and the RMOW further agree that:

- a) Both parties will provide ongoing, timely collaboration for all required OAP submissions to the Province, as well as any other reporting requirements that may be required by the Province as associated with the OAP program; and
- b) The WDC will provide letters of support, attendance at relevant meetings, acknowledgment of funding, and any such other information or data on employee restricted housing as reasonably requested by the RMOW or the Province.

5. GENERAL PROVISIONS

5.1 The RMOW and the WDC will participate in meaningful dialogue of planned annual OAP-funded investments, however, the WDC has the ultimate responsibility to define and allocate MRDT funds consistent with its own internal financial governance models.

5.2 Any notice required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered or if transmitted by email to such party

a. to the RMOW, at:

Resort Municipality of Whistler
4325 Blackcomb Way
Whistler, BC, V8E 0X5
Attention: Chief Administrative Officer
Email: mfurey@whistler.ca

with a copy to:

Resort Municipality of Whistler
4325 Blackcomb Way
Whistler, BC, V8E 0X5
Attention: Corporate Officer
Email: corporate@whistler.ca

b) to the WDC, at:

Whistler Development Corp
1616-808 Nelson Street, Box 12147
Vancouver, BC, V6Z 2H2
Attention: President
Email: djackson@whistler.ca

with a copy to:

Whistler Development Corp
1616-808 Nelson Street, Box 12147
Vancouver, BC, V6Z 2H2
Attention: Secretary
Email: jcrompton@whistler.ca

or at such other address or addresses as the party to whom such notice is to be given shall have last notified the party giving the same in the manner provided in this section.

- 5.3 For greater certainty, this Agreement is not intended to modify, alter or amend the terms of any existing agreements between the RMOW and the WDC.
- 5.4 The parties represent that they have all necessary power and authority to enter into this Agreement and to perform its obligations hereunder and the performance by each party of its obligations hereunder have been duly authorized by necessary corporate or municipal actions and the parties intend that the other parties are entitled to rely on these representations and warranties.
- 5.5 The parties may not assign any of its rights or obligations under this Agreement without the express written consent of the other party.
- 5.6 This Agreement may be amended only by a written document signed by both parties.
- 5.7 Time is of the essence in this Agreement.
- 5.8 The headings of the various sections and subsections of this Agreement are used for convenience of reference only and shall not modify, define or limit any of the provisions hereof.
- 5.9 No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. If any provisions or portions thereof of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions or portions thereof shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law as the intent of the parties can be maintained.
- 5.10 This Agreement may be executed in counterparts, including execution by facsimile and each counterpart when so executed will be deemed an original and all such counterparts will constitute on and the same document.

SIGNED by the parties as of the date identified on the first page hereof:

RESORT MUNICIPALITY OF WHISTLER

By: _____
Authorized signatory

By: _____
Authorized signatory

WHISTLER 2020 DEVELOPMENT CORPORATION

By: _____
Authorized signatory

By: _____
Authorized signatory