

2023 WHISTLER 2020 DEVELOPMENT CORP OAP CONTRIBUTION AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2023.

BETWEEN: RESORT MUNICIPALITY OF WHISTLER

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

AND: WHISTLER 2020 DEVELOPMENT CORP

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 British Columbia](#) corporation, wholly owned by the RMOW. The WDC is responsible to provide, as a service on behalf of the RMOW, the design, financing, development, and construction of employee restricted housing;
- C. Consistent with the Act, the RMOW receives Municipal and Regional District Tax (MRDT) from the Province;
- D. In October 2018, the MRDT program was expanded to include the collection of fees from Online Accommodation Providers (OAP). Proceeds from OAP Revenue may be designated by the RMOW to support affordable housing initiatives;
- E. The RMOW wishes to provide, [and views the OAP Revenue as](#), a consistent, sustainable source of core operational funding for the WDC to ensure WDC's long-term viability;
- F. The RMOW has agreed to contribute ~~its-a~~ share of OAP ~~R~~venues to [the WDC in order to provide a stable ongoing revenue source to fund the core operational funding needs -of the WDC corporation, the WDC,](#) for the purposes of supporting the development and construction of building employee restricted housing on lands included in the Bare Trust and Agency Agreement (as amended and updated from time to time);
- G. The parties wish to enter into this Agreement to confirm the way the OAP 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) "Bare Trust and Agency Agreement" refers to the Declaration of Bare Trust and Agency Agreement dated for reference on the 15th of October 2008 between the RMOW and the WDC inclusive of all Schedules, and as updated from time to time;
- c) "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~~
- d) "OAP" means the additional tax collected by the Province from online accommodation providers;
- e) "OAP Revenue" means the amount of OAP revenue that accrues to the RMOW in a calendar year;
- f) "Project Plan" refers to the Project Plans submitted by WDC from time to time, and endorsed by RMOW, and collectively forming parts of this Agreement;
- g) "Province" means the Government of British Columbia; and
- h) "TW" means Whistler Resort Association, dba Tourism Whistler, a separate and precedent beneficiary of OAP Revenue.

2. OAP CONTRIBUTIONS

2.1. Subject to sections 2.2, 2.3 and 2.4, the RMOW agrees to transfer OAP contributions to WDC as follows:

- a) The RMOW agrees to contribute to the WDC a portion of OAP Revenue it receives during the term of this Agreement from the Province ~~up to a maximum annual allocation as outlined in section 4.1~~ up to a maximum annual allocation as outlined in section 4.1.
- b) ~~Payments of MRDT from the Province are generally received by the RMOW within 60 days following the end of each month.~~ The OAP portion of MRDT ~~identified as OAP is distributed~~ identified by the Province ~~concurrent with this on a quarterly payment basis~~ and shall be the singular source for the determination of the OAP amount. OAP Revenues are remitted to the RMOW quarterly for the preceding three 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 period in which that OAP Revenue was collected by the Province.
- 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 Revenue between the organizations and will ensure that reasonable effort is made to minimize delays whenever possible.

2.2. ~~2.2~~ Both parties agree that the amount in 2.1 will be invested to support the ongoing core operational costs of the WDC, which are incurred in service of the ongoing development

and construction of employee restricted housing on lands included within the Bare Trust and Agency Agreement (as amended from time to time), on projects outlined in associated Project Plans, and consistent with the OAP program requirements and related guidelines set out by the Provincial Government and approved by the Province in 2018.

- 2.3. ~~2.3~~ Both parties mutually recognize that long-term, stable funding for Employee Restricted Housing development is critical to the success of the Whistler community, in general, and both organizations in particular. In the event the following occurs:
- a) if the Province changes the rates, criteria and/or eligibility of the OAP program through changes to the Act, Designated Accommodation Area Tax Regulation, then both parties will comply accordingly;
 - b) if the Province reduces the OAP funding below twice the annual maximum amount outlined in section 4.1, 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 to WDC transfers;
- 2.4. ~~2.4~~ If ~~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 Agreement with the shared intent to identify potential alternate sources of core operational funding for WDC activities.

3. Project Plans

- 3.1. ~~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 ~~m~~Municipal ~~c~~Corporation, WDC will report quarterly on Project Plan spending and construction progress to the RMOW. Transfer of OAP Revenues to WDC as defined herein are contingent on the ongoing receipt of these quarterly reports.
- 3.2. ~~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 Plans. Revisions to the Project Plans will be considered by RMOW as necessary.
- 3.3. ~~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; and that all Project Plans are subject to the full extent of the development permitting processes of the RMOW, nothing in this Agreement infers an approval of any of the required steps associated with any of the statutory development approval steps administered by the RMOW.

4. Maximum Annual Core Operational Funding Transfer

- 4.1. Regardless of the total value of OAP Revenues received by the RMOW in a given year, the maximum annual amount of OAP Revenues to be transferred from the RMOW to the WDC in service of funding the core operation needs of the corporation is limited as follows:

- a) The 2023 maximum transfer of OAP revenues to the WDC from the RMOW for core operational funding is limited to \$550,000 for the calendar year.
- b) The maximum value set in 4.1(a) will be escalated on January 1 of each subsequent year of the term of this Agreement by either +5%, or the change in the annual core consumer price index of the previous year, whichever is higher.
- a)c) If WDC anticipates a need to increase core operation funding beyond the prescribed escalation noted in 4.1(b), WDC shall submit a written request to the RMOW with associated rationale and budget, a minimum of six (6) months in advance of any potential increase being implemented. If the proposed increase to core operation funding is approved by Council, the increase would take the form of an amendment to the Agreement reflecting the new amount.

4.5. Term-

5.1. The initial term of this Agreement commences on April 1, 2023 and expires on March 31, 2028. The WDC may renew the Agreement for up to three (3) additional five-year terms, provided that the WDC submits written intention to exercise its renewal rights to the RMOW at least six months prior to the end of the current term.

4.1.—

5.6. Additional Covenants

5.1.6.1. 5.1.—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.

6.7. General Provisions

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

6.1.7.2. 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

to the RMOW, at:
 Resort Municipality of Whistler
 4325 Blackcomb Way
 Whistler, BC, V8E 0X5
 Attention: Chief Administrative Officer
 Email: vcullen@whistler.ca

to the WDC, at:
 Whistler 2020 Development Corp
 1616-808 Nelson Street, Box 12147
 Vancouver, BC, V6Z 2H2
 Attention: President
 Email: emartin@ledmac.com

with a copy to:

with a copy to:

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

Whistler 2020 Development Corp
1616-808 Nelson Street, Box 12147
Vancouver, BC, V6Z 2H2
Attention: Treasurer
Email: kenroggeman@gmail.com

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.

7.3. 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.

6.2.7.4. 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.

6.3.7.5. The parties may not assign any of its rights or obligations under this Agreement without the express written consent of the other party.

6.4.7.6. This Agreement may be amended only by a written document signed by both parties.

6.5.7.7. Time is of the essence in this Agreement.

6.6.7.8. 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,

6.7.7.9. 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.

6.8.7.10. 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 its authorised signatories:)
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WHISTLER 2020 DEVELOPMENT CORP
By its authorised signatories:

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