

INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into by and between Tillamook County, acting by and through its Board of Commissioners, hereinafter "County," and the Tillamook County Economic Development Council, hereinafter "EDC," hereinafter collectively, "the Parties."

RECITALS

Whereas, 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 TLT funds 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 and details, including provisions for the allocation of the promotion and tourism funds; and

Whereas Ordinance #75 also provides that County may contract with EDC or a tourism promotion agency to allocate and distribute TLT funds; and

Whereas, EDC entered into such an Agreement on January 29, 2014 for a not-to-exceed three-year trial basis. This Agreement was subsequently amended on April 16, 2014 and March 27, 2015. This Second Amended Agreement will expire on December 31, 2016 unless otherwise terminated; and

Whereas, the Parties desire to cancel the said Second Amended Agreement and enter into a new Agreement for the purpose of defining the rights, duties and responsibilities of each party for the allocation and distribution of TLT funds to be used for tourism promotion.

WITNESSETH

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

Section 1.0 ESTABLISHMENT OF TOURISM PROMOTION ADVISORY COMMITTEE

There is hereby established a seven to nine-member committee, to be known as the Tillamook County Tourism Promotion Advisory Committee (TPAC), who shall be appointed by the EDC Board. TPAC shall always hold a member-majority of those who are transient lodging providers or are otherwise affiliated with the tourism industry. No EDC member will be on the committee.

- 1.1. The purpose of the TPAC is to advise the EDC and the Tillamook County Tourism Director on proposed policies for the use of Tillamook County TLT promotion and marketing funds; strategies for tourism promotion and marketing; and such other matters involving tourism promotion or marketing as might be requested by EDC.
- 1.2. The TPAC is a public body within the meaning of the Oregon Public Meetings law and the Oregon Public Records law. All of its meetings are public meetings and the EDC shall ensure that public notice of the Committee's meetings is provided as required by law. Minutes of all Committee meetings shall also be taken and retained by EDC as required by law.

Section 2.0 RIGHTS, DUTIES AND AUTHORITIES OF EDC

- 2.1 Each year EDC shall develop and implement a tourism promotions program designed to promote Tillamook County as a tourism destination with particular focus on the shoulder- and off seasons (October 1 – May 15).
- 2.2 All EDC expenditures of TLT funds shall comply with Tillamook County Ordinances #74 and #75.
- 2.3 Consistent with subsection 2.2 above, EDC may fund any of the following activities: advertising; publicizing or distributing information for the purpose of attracting or welcoming tourists; conducting strategic planning and research necessary to stimulate future tourism development; operating tourism promotion agencies or a visitors' center; marketing special events and festivals designed to attract tourists.

- 2.4 Prior to the initial disbursement of funds pursuant to section 4 of this Agreement, EDC shall prepare and present to County for its approval, a written report with county-wide/regional strategies for tourism promotion; data that tends to support such strategies; proposed measureable annual benchmarks by which the success of the promotions and marketing strategies can be judged; and EDC's proposed budget for administration and overhead specifically limited to tourism promotion and marketing.
- 2.5 On or before May 15 in the second and subsequent years that this Agreement is in effect, EDC shall prepare and present to County for its approval, an annual report that contains, in addition to any amendments to the matters described in section 2.4 of this Agreement, the details concerning the allocations, amounts and uses of TLT funds during the prior year, an accounting of EDC's expenditures of TLT funds for administration and overhead; the unexpended balance of TLT funds in the possession of EDC; a copy of EDC's most recent audit report; and the data required to determine whether EDC has achieved its annual benchmarks for promotion and tourism.
- 2.6 At least semi-annually, including annual reporting, the EDC 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.
- 2.7 In allocating TLT funds for tourism promotion, EDC shall give preference to collaborative proposals that are consistent with the approved strategies and involve broad participation within the hospitality and tourism industry or other promotional proposals that embrace county-wide themes.
- 2.8 EDC shall include within its annual budget adequate revenue and expenditure authority for the amounts of TLT funds anticipated under this Agreement as required by ORS 294.900 - 294.930 and all such funds shall be subject to EDC's annual municipal audit.

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 Should EDC fail to meet its annual benchmarks, County, with prior notice to EDC, may conduct a public hearing at which time EDC must provide reasonable evidence that EDC's failure to achieve the annual benchmarks was beyond EDC's control. Upon the conclusion of such a public hearing, if County finds, in its sole discretion, that EDC's evidence did not present a reasonable justification, County may unilaterally amend or terminate this Agreement. Notwithstanding any provisions in Section 8 to the contrary, termination in such cases shall be subject

to a 45-day written notice. A transition plan and budget will be agreed to within 30 days.

- 3.3 County shall make staff available as needed to assist EDC in compliance with public contracting law.

Section 4.0 DISTRIBUTIONS OF TLT MARKETING AND PROMOTION FUNDS

- 4.1 During the first year of this agreement, 45% of the net TLT revenue allocated for tourism shall be available for distribution to EDC under the provisions of this Agreement. Each year thereafter the amount available for distribution to EDC under this Agreement shall increase by 1% until the 5th year of this agreement when 50% shall be available for distribution to EDC.
- 4.2 Following the approval of the EDC report described in subsection 2.4 of this Agreement, County shall make its first distribution to EDC for the amount of TLT funds allocated and collected for tourism marketing and promotion in the prior calendar quarter together with any prior quarters for which no distributions have been made.
- 4.3 Following the initial distribution of TLT funds described in subsection 4.2 of this Agreement and subject to subsections 3.3 and 4.1 of this Agreement, TLT funds shall thereafter be distributed on or before May 31, August 31, November 30 and February 28 based on the previously unallocated cash on hand at the close of the prior calendar quarter.
- 4.4 Until further notice to County by EDC, All TLT funds due EDC pursuant to this Agreement will be made by County check payable to Tillamook Bay Community College (TBCC) as fiscal agent for EDC.

Section 5.0 INSURANCE

- 5.1 Each Party agrees to maintain insurance sufficient to meet sums specified by ORS 30.270.

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 Intergovernmental 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 initial term of this Agreement shall begin July 1, 2016 and shall continue in force and effect until June 30, 2021. Prior to the expiration of the initial term, the parties will review this Agreement. Upon mutual consent, this Agreement may be modified to include provision for additional terms.

Section 8.0 TERMINATION

8.1 Without Notice

- 8.1.1 The parties mutually consent to termination in writing.

8.2 With Notice

- 8.2.1 For cause pursuant to subsection 3.3 of this Agreement.
- 8.2.2 Any party breaches any duty, term or condition of this Agreement.
- 8.2.3 Either party commits a fraud or misrepresentation upon the other party.
- 8.2.4 Either party gives one hundred eighty (180) days' notice.

Section 9.0 TERMINATION OF PRIOR AGREEMENTS

- 9.1 The prior agreements and amendments between the Parties concerning TLT funds dated January 29, 2014, April 16, 2014 and March 27, 2015 are hereby terminated.

Section 10.0 GENERAL PROVISIONS

10.1 WAIVER; MODIFICATION

- 10.1.1 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 upon the written-signed consent of both parties.

10.2 ATTORNEYS' FEES

10.2.1 Attorney's 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.

10.3 LEGAL REPRESENTATION

10.3.1 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.

10.4 NOTICES

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

10.4.1.1 actually delivered, or

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

10.5 LANGUAGE

10.5.1 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.

10.6 INTEGRATION

10.6.1 This Agreement supersedes all prior oral or written Agreements between EDC 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.

10.7 SAVINGS

10.7.1 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.

10.8 JURISDICTION; LAW

10.8.1 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 the EDC have executed this Agreement on the date written below.

DATED THIS 21 DAY OF April, 2016.

ECONOMIC DEVELOPMENT COUNCIL

By: Michele Bradley
Michele Bradley, Chair
4301 Third Street, Tillamook OR 97141

DATED THIS 4th DAY OF May, 2016.

THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

	Aye	Nay	Abstain/Absent
<u>Mark Labhart</u> Mark Labhart, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bill Baertlein</u> Bill Baertlein, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Tim Josi</u> Tim Josi, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ATTEST: Tassi O'Neil, County Clerk

By: Kathleen Cox
Special Deputy

APPROVED AS TO FORM:

William K. Sargent
William K. Sargent
County Counsel

