

**Kalispell Tourism Business Improvement District Board of Directors and
Kalispell Chamber of Commerce**

Operating Agreement

THIS AGREEMENT ("Agreement") is made this 1st day July, 2020, by and between the Kalispell Chamber of Commerce, a 501(c)(6) non-profit corporation, with its principal place of business at 15 Depot Park, Kalispell, Montana, ("Chamber/CVB"), and the Kalispell Tourism Business Improvement District Board of Directors, a division of the City of Kalispell, with its principal place of business at 15 Depot Park, Kalispell, Montana ("TBID"). The Chamber and the TBID are collectively referred to as the "Parties" and individually at the "Party".

WHEREAS, on January 6, 2020, the City of Kalispell, by Resolution 5954, created a Tourism Business Improvement District for a 10-year duration, effective July 1, 2020, and;

WHEREAS, the mission of the TBID is to promote and market Kalispell, Montana and to promote domestic and international travel, conventions, group travel, events, sports, and generate room nights for lodging facilities in Kalispell by effectively marketing our region as a preferred travel destination, and;

WHEREAS, the mission of the Chamber is to develop a strong business climate and vibrant economy by serving the community in a leadership role thereby enhancing the quality of life, and;

WHEREAS, the Chamber and TBID have common goals and interests in the promotion, marketing, and selling of visitor overnights and such goals and interests are in furtherance of the purposes of both Parties, and;

WHEREAS, the State of Montana has mandated that the director of a tourism business improvement district must be the executive director of the existing convention and visitor bureau, when one exists, and the Chamber has served as that designated entity by the City of Kalispell since 1987, and;

WHEREAS, given their common interests and their mutual desire to maximize opportunities available to them and to minimize administrative expenses, the Parties wish to enter into this Agreement, by which the Chamber will provide the TBID with certain staffing, office space, office equipment, office furniture, office supplies, office services, and other administrative support, and by which the Chamber may license, and TBID may accept certain intellectual property;

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the Parties hereby agrees as follows:

I. Term and Termination

Term. This agreement shall be effective as of July 1, 2020 and shall remain in full force and effect until June 30, 2030, or as long as the tourism business improvement district created by the City of

Kalispell pursuant to Resolution 5954 is in effect, unless terminated earlier pursuant to this Agreement.

- A. Termination without Cause. Either Party may terminate this Agreement, without cause, by giving written notice to the other Party stating when, but not less than ninety (90) days thereafter, such termination shall be effective.
- B. Termination for Cause. Either Party may terminate this Agreement, for cause, if either Party notifies the other Party of a material breach of any provision of the Agreement. The breaching Party shall have thirty (30) days following notice to cure the breach. The notice shall specify the alleged breach and the date on which termination will be effective unless such breach is cured to the satisfaction of the non-breaching Party within the time period allowed.

C. Termination for other Reasons.

- 1. Either Party may terminate this Agreement upon thirty (30) days-notice to the other if at any time:
 - a. The City of Kalispell does not approve an annual work plan or budget for the tourism business improvement district that permits continuation of this Agreement as determined in their reasonable discretion of the TBID.
 - b. Either Party determines that its continued relationship with the other Party will threaten any relevant tax exemption that either Party now possesses or shall possess in the future.
- 2. This Agreement shall terminate automatically upon termination of the tourism business improvement district created by the City of Kalispell pursuant to Resolution 5954.
- 3. This Agreement may be terminated at any time by mutual written agreement of the Parties.

II. Board Responsibilities and Relationship

The Board of Directors of each Party shall retain all governing authority of that respective Party placed in it by law and its bylaws. The Board of Directors of each Party shall represent that Party in matters relating to this Agreement and interpretation. Each Party shall appoint a non-voting member from its Board of Directors to serve in an ex officio capacity on the other Party's Board to provide regular reports and communications.

III. Services

During the term of this Agreement, TBID engages Chamber/CVB to provide the services

and functions described in this Agreement, and the Chamber/CVB agrees to provide such services and functions, under the terms set forth herein. The services and functions are as follows:

A. Offices Space, Furniture, Supplies, and Services

1. Office Space. Chamber/CVB shall provide TBID with office space, at the TBID's cost, within the Chamber/CVB's premises, currently located at 15 Depot Park, Kalispell, Montana. Rent shall be negotiated annually or by agreed upon terms based on the Rocky Mountain Consumer Price Index.
2. Furniture, Fixtures, and Equipment. Chamber/CVB shall provide TBID with the use of office equipment, office furniture, office supplies, office services, and other administrative support as is currently offered.
3. Payment for Specific Items. If the Parties agree that specific additional equipment, furniture, supplies or services are needed solely for the use of the TBID, the cost of the same will be borne by the TBID. If the Parties determine that specific additional equipment, furniture, supplies or services are needed for the mutual shared use of the Parties, the Parties shall determine a reasonable basis to share the cost.

B. Professional Services and Staffing

1. President/CEO. The President/CEO of the Chamber/CVB shall act as the Executive Director of the TBID without charge to the TBID. The President/CEO shall report to the TBID Board of Directors and shall serve as the Director of the TBID funds as required by State statute (Montana Code Annotated-2007, 7-12-1121). The President/CEO shall have supervisory authority and responsibility for all staff of the Chamber/CVB, and shall have sole discretion to hire, fire, evaluate and assign duties to employees. The President/CEO will be evaluated by the Chamber/CVB Board. The TBID may have a representative serve on the selection committee for TBID program manager positions.
2. Employee Services. Chamber/CVB shall employ professionals who shall provide services to the TBID. These employees shall report to the Chamber/CVB President/CEO. TBID shall reimburse Chamber/CVB for all costs and expenses related to recruiting, hiring, and training employees including all costs related to salary, benefits and other compensation as may be adjusted from time to time. These employees shall be subject to the employment policies of the Chamber/CVB and shall be subject to its oversight and supervision. The Chamber/CVB shall have the authority to hire, discipline and discharge its employees.
3. Financial Administration. The Chamber/CVB shall establish and administer accounting procedures, systems, and controls in accordance with generally

accepted accounting principles in order to develop, prepare and safe keep the financial records and books of account for the business and financial affairs of the TBID. The Chamber/CVB shall prepare and provide regular financial statements for the review and use of the Board of Directors of the TBID at its regular Board meetings.

- a. Disbursements. TBID disbursements shall be made in accordance with the bylaws of the TBID. The President/CEO shall assist in development of its annual report and workplan to present for annual approval by the City of Kalispell.
- b. Agency Fund. The Chamber/CVB is acting as an agent of the City of Kalispell for the administration of TBID funds. The City will collect assessed funds quarterly from hoteliers within the district. Disbursements will be made quarterly from the City into a restricted account of the Chamber/CVB. The Chamber/CVB will provide accounting, tax, and audit services, and liability insurance according to the standards established by the City for Agency Funds. Such costs will be paid from, or reimbursed by, TBID funds.

IV. Intellectual and Physical Property

- A. Name and Logo. Each Party shall retain ownership and use of its own registered name, logo, and any trademarks or service marks.
- B. Confidential Information and Intellectual Property. During the term of this Agreement, the Parties anticipate that certain information and intellectual property will be developed for the purposes of the Chamber/CVB and the TBID's mission and activities. Said confidential information and intellectual property includes, but is not limited to, databases, lists, customer lists, visitor guides and publications, financial and proprietary information, concepts, documents, materials, trade secrets, business contacts, and ideas about current and future projects which the Chamber/CVB or TBID regards as confidential. All such confidential information developed pursuant to the services provided under this Agreement shall be owned jointly by the Chamber/CVB and the TBID.
- C. Physical Property. Physical property solely with TBID funds will be owned by the TBID. Property purchased jointly by the Chamber/CVB and TBID will be owned jointly by the Chamber/CVB and the TBID and will be distributed equitably upon any separation of the Parties.

V. Insurance

- A. TBID Insurance. The Chamber/CVB, as an agent of the City, shall maintain a policy or

policies of comprehensive general liability insurance *coverage* which will include activities of the TBID and name the City as additionally insured in an amount sufficient for such purposes by the City of Kalispell, as required by 7-12-1143 MCA.

- B. Proof of Coverage. Proof of the foregoing insurance coverage, as applicable, shall be provided by the Chamber/CVB to the City at the commencement of this Agreement, and annually upon renewal of coverage.

VI. Indemnification

Each Party hereby agrees to indemnify, *save* and hold harmless the other Party and the other Party's subsidiaries, affiliates, related entities, partners, agents, directors, employees, attorneys, heirs, successors, and assigns, and each other from and against all claims, actions, demands, losses, damages, judgments, settlements, costs and expenses (including reasonable attorney's fees and expenses), and liabilities of every kind and character whatsoever, which may arise by reason of: 1) any act or omission constituting a breach or default under this Agreement by the party or any of its officers, directors, employees, or agents in their capacity as officers, directors, employees, or agents of the Party; and/or 2) the inaccuracy or breach of any of the representations or warranties made by the Party under this Agreement. The indemnity under this Section shall require the payment of costs and expenses by the liable Party as they are incurred. The Party seeking reimbursement or indemnity under this Section shall promptly notify the liable (other) Party upon receipt of any claim or legal action referenced in this Section. The indemnified Party shall not at any time admit liability or otherwise attempt to settle or compromise said claim, action or demand, except upon the express prior written instruction or agreement of the indemnifying Party or upon the repudiation or denial of the indemnification by the indemnifying Party. For the purposes of this Section, a repudiation or denial of indemnification shall be deemed to occur if the Party seeking indemnification does not receive written confirmation of indemnification from the other Party from whom the indemnification is sought within thirty (30) calendar days of notice of the claim, action or demand by the Party seeking indemnification. The Party seeking indemnification shall make all reasonable efforts to provide the Party from whom reimbursement is sought with all information that may be useful in determining whether indemnification is proper. The provisions of this Section shall survive any termination or expiration of this Agreement.

VII. Relationship of Parties

In the performance of the services to be provided pursuant to this Agreement, the Parties understand and agree that the Chamber/CVB and any of its employees or agents shall be, and at all times are, acting as agents of the TBID. No Party shall have the power to bind or obligate the other except as specifically provided in this Agreement.

VIII. Notices

Any notices required hereunder shall be in writing and shall be deemed to have been

duly given when hand delivered or when deposited in the United State mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, or sent by federal express or other courier service and addressed to the person(s) at the address set forth at the end of this Agreement or such other person and/or address of which the receiving party has given notice pursuant to this Section. All notices shall be considered given and received on the date appearing on the return receipt thereof, or on the delivery date appearing on the records of federal express or other courier service.

IX. General Provisions

- A. Legal Capacity. The Parties each warrant to the other that it has the legal capacity to enter into this Agreement, that the execution has been duly approved by its Board of Directors and that its obligations under the Agreement do not violate its organizational documents, bylaws, or any agreement to which it is party.
- B. Non-Assumption of Liability. Except as specifically set forth herein, Chamber/CVB shall not, by entering in to and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts or TBID under this Agreement. TBID shall not, by entering in to and performing this Agreement, become liable for any of the future obligations, liabilities, or debts of Chamber/CVB.
- C. Amendments. No amendments or additions to this Agreement shall be binding unless executed in writing and signed by the Parties
- D. Governing Law. This Agreement shall be governed by and constructed according to the laws of and subject exclusively to the jurisdiction of the courts of the State of Montana. Venue for any action under this Agreement shall be in Flathead County, Montana.
- E. Waiver of Breach. No waiver of any breach of any provision or condition of this Agreement, whether by course or dealing or otherwise, shall be effective unless evidenced by any instrument in writing duly executed by the party against whom such enforcement or waiver is sought. Waiver of breach of any term or provision of this Agreement shall not be deemed a waiver of any other breach of the same or a difference provision.
- F. Severability. In the event any term or provision of this Agreement is rendered invalid or unenforceable by any valid legislative or regulatory act or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- G. Headings. The paragraph headings contained in this Agreement are for reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.
- H. Prior Agreements. This Agreement constitutes the complete Agreement of the Parties and shall supersede and render null and void all prior and contemporaneous agreements between the Parties regarding the subject matter hereof.

I. Assignment. Neither Party may assign its rights duties or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in the sole discretion of a Party. This Agreement shall be binding upon and inure to the benefit of permitted assignees.

J. Attorney's Fees. If any legal proceeding is commenced which is related to this Agreement, the losing Party shall pay the prevailing Party's actual attorney's fees and expenses incurred in the preparation for, conduct of or appeal or enforcement of judgment from the proceeding.

K. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which taken together, shall constitute one and the same instrument.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on this 1st day of July, 2020.

KALISPELL TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD OF DIRECTORS

BY:  _____

Emily Schroeder
TBID Board Chair

KALISPELL CHAMBER OF COMMERCE AND CONVENTION AND VISITOR BUREAU

BY:  _____

Joe Unterreiner
President/CEO