

FEE FOR SERVICES AGREEMENT

THIS AGREEMENT dated for reference _____, 2021 is:

BETWEEN:

CITY OF LANGLEY, having an address at 20399 Douglas Crescent, Langley, BC (“City”)

AND:

THE DOWNTOWN LANGLEY BUSINESS ASSOCIATION, having an address at 201-20559 Fraser Hwy, Langley, BC, V3A 4G3 (“Service Provider”)

GIVEN THAT the City wishes to engage the Service Provider to provide tourism marketing services to the City in accordance with the terms and conditions of this agreement;

This agreement is evidence that in consideration of the mutual promises set out herein (the receipt and sufficiency the parties acknowledge), the City and the Service Provider agree with each other as follows:

1.0 Definitions

1.1 In this agreement, in addition to the words defined above,

- (a) “City’s Representative” means the Director of Corporate Services or such other person as the City may appoint in writing;
- (b) “Professionals” means, subject to section 4.1, any individual identified by name in the Service Provider’s Proposal and any individuals employed or otherwise engaged by the Service Provider to perform the Services with the prior consent of the City;
- (c) “Services” means the acts, services and work necessary to promote and support tourism in the City of Langley and fulfill the requirements of the British Columbia Municipal Regional District Tax Program.

2.0 Services To Be Performed By The Service Provider

- 2.1 The Service Provider agrees to perform the Services on the terms and conditions of this agreement.
- 2.2 At least thirty (30) days prior to any reporting deadlines established by the Province of British Columbia’s Municipal Regional District Tax Program, the Service Provider must prepare the Annual Performance Report, the Financial Report, the One-Year Tactical

Plan, and any other reports as required by the Province of British Columbia, so that the City can fulfill its reporting requirements as a Designated Recipient.

3.0 Representation and Consultation By The Service Provider

- 3.1 The Service Provider acknowledges that the City requires a representative cross-section of the City's tourism businesses and accommodation service providers to govern the Service Provider under this Agreement.
- 3.2 The City acknowledges that the Service Provider is a membership-driven organization and the Service Provider's current bylaws do not permit organizational membership to be available to all of the tourism businesses and accommodation service providers within the City of Langley's geographic boundaries.
- 3.3 To ensure that the interests of a cross-section of the City of Langley's tourism businesses and accommodation service providers are considered by the Board of Directors of the Service Provider (the "Board"), the Service Provider must:
- (a) Engage in meaningful consultation with accommodation service providers within the City of Langley that are not eligible for organizational membership;
 - (b) Have at least one (1) Director on the Board designated to represent the tourism accommodation service sector during the term of this Agreement.
- 3.4 The consultation undertaken by the Service Provider under section 3.3 must include the following activities:
- (a) On a quarter-yearly basis, the Board must send a newsletter to all accommodation service providers in the City of Langley about tourism activity and the Service Provider's progress on the One Year Tactical Plan;
 - (b) On an annual basis, the Board must conduct consultation meetings between the Service Provider and tourism businesses and accommodation service providers that are not eligible to become members of the Service Provider's organization, with the purpose of discussing the progress of the Langley (City) Tourism Plan and to solicit feedback.
- 3.5 The Board may delegate to an individual member of the Board or an employee of the Service Provider the authority to act on behalf of the Service Provider in executing the consultation activities outlined in sections 3.4 of this Agreement.

4.0 Employment of Professionals

4.1 Without affecting the Service Provider's obligations under this agreement, the Service Provider must only engage the services of individuals who have the education, training, skill and experience necessary to perform the Services in accordance with section 2.1, and must cause them to perform the Services on behalf of the Service Provider.

5.0 Warranty As To Quality of Services

5.1 The Service Provider represents and warrants to the City that:

- (a) The Professionals have the education, training, skill, experience and resources necessary to perform the Services;
- (b) The Services will be performed in accordance with the standards of care, skill and diligence normally provided by professionals providing services similar to the Services, all applicable enactments and laws, and in accordance with all relevant codes, rules, regulations and standards of any professional or industry organization or association, and the Service Provider acknowledges and agrees that the City has entered into this agreement relying on the representations and warranties in this section.

6.0 Remuneration and Reimbursement

6.1 The City must pay the Service Provider the annual 2% Municipal and Regional District Tax plus the \$15,000 annual Fee For Service from the City for the Services in accordance with this agreement.

6.2 The Contract Price shall be the entire compensation to the Service Provider for the Services and shall cover and include all fees, expenses, disbursements, profit, overhead and any other costs incurred by the Service Provider in performing the Services.

6.3 In no event shall the Contract Price be exceeded without the prior written agreement of the City.

7.0 Financial Reports and Invoices

7.1 On an annual basis, the Service Provider must provide to the City a financial report in respect of the immediately preceding month outlining the revenues and expenditures incurred as a result of providing the Services.

8.0 Payment By City

8.1 The City must pay to the Service Provider any amounts due within thirty (30) days after receipt of the funds from the Municipal and Regional District Tax from the Province of British Columbia. The City may withhold some or all of any payment due to:

- (a) The Service Provider's failure to perform the Services in a satisfactory manner, as determined by the City in its sole discretion; or
- (b) The Service Provider's breach of this Agreement.

9.0 City's Representative

9.1 The City appoints the City's Representative as the only person authorized by the City to communicate with the Service Provider or to make determinations, decisions and directions in respect of this agreement.

9.2 The Service Provider agrees that the City is not bound by any act, omission, communication, determination, decision or direction of any person other than the City's Representative.

10.0 Term

10.1 The Service Provider shall commence the Services on January 1, 2022 and perform the Services until December 31, 2026 (the "Initial Term"), subject to extension agreed upon by the parties.

10.2 This Agreement may be extended for a four (5) year term (the "Extended Term") by mutual written agreement of the City and the Service Provider, executed not less than ninety (90) days prior to the expiration of the Initial Term.

11.0 Termination or Suspension

11.1 Despite the rest of this Agreement, the City or the Service Provider under this Agreement may, at their sole discretion and without cause, terminate or suspend all, or any part, of the Services by giving one (1) year notice of termination to the other party, effective on delivery of the notice.

11.2 If the City terminates or suspends all or part of the Services under section 11.1 of this Agreement, the Service Provider may deliver to the City an invoice for costs incurred during the period between the end of the month for which the last Municipal and Regional District Tax payment was remitted by the City and the date of termination or suspension.

11.3 The Service Provider is not entitled to, and irrevocably waives and releases, damages or compensation for costs incurred, loss of profit or loss of opportunity, directly or indirectly arising out of termination or suspension of all, or any part, of the Services.

12.0 Termination for Default

12.1 Despite the rest of this agreement, the City may terminate all, or any part of, the Services, by giving notice of termination to the Service Provider, which is effective upon delivery of the notice if:

- (a) The Service Provider breaches this agreement and the Service Provider is not diligently pursuing a cure for the breach to the satisfaction of the City, in the City's sole discretion, within five (5) days after notice of the breach is given to the Service Provider by the City;
- (b) The Service Provider breaches the agreement and has diligently pursued a cure for the breach in accordance with subsection (a), but has not cured the breach within thirty days after notice of the breach is given to the Service Provider by the City; or
- (c) The Service Provider becomes bankrupt or insolvent, a receiving order is made against the Service Provider, an assignment is made for the benefit of its creditors, an order is made or resolution passed for the winding up or dissolution of the Service Provider, or the Service Provider takes the benefit of any enactment relating to bankrupt or insolvent debtors.

12.2 Without limiting any other right or remedy available to the City, if the City terminates part or all of the Services under section 12.1 of this Agreement, the City may arrange, upon such terms and conditions and in such manner as the City considers appropriate, for performance of any part of the Services remaining to be completed, and the Service Provider is liable to the City for any expenses reasonably and necessarily incurred by the City in engaging the services of another person to perform those Services.

12.3 The City may set off against, and withhold from amounts due to the Service Provider such amounts as the City determines, acting reasonably, are necessary to compensate and reimburse the City for the expenses described in this section.

13.0 Records**13.1 The Service Provider:**

- (a) Must keep proper accounts and records of its performance of the Services, including invoices, receipts, and vouchers, which must at all reasonable times be open to audit and inspection by the City, which may make copies and take extracts from the accounts and records;
- (b) Must keep reasonably detailed records of performance of the Services by the Service Provider, which must at all reasonable times be open to inspection by the City, which may make copies and take extracts from the records;
- (c) Must afford facilities and access to accounts and records for audit and inspection by the City and must furnish the City with such information as the City may from time to time require regarding those documents; and
- (d) Must preserve, and keep available for audit and inspection, all records described in section 13.1(a) through (c) for at least two (2) years after completion of the Services or termination of this agreement, whichever applies.

14.0 Delivery of Records

14.1 If the City terminates all or part of the Services under this agreement, the Service Provider must immediately deliver to the City, without request, all Project-related documents in the Service Provider's possession or under its control.

15.0 Ownership of Intellectual Property

15.1 By this section, the Service Provider irrevocably grants to the City the unrestricted license for the City to use, for the Services and the City's other activities related to the Project all technical information and intellectual property, including inventions, conceived or developed, or first actually reduced to practice, in performing the Services. The Service Provider agrees that the license granted by this section includes the right for the City, at any times, to adapt, use and modify all such technical information and intellectual property for the City's uses set out above.

16.0 Confidential Information

16.1 The Service Provider will not disclose any information provided by the City under their agreement except to the extent necessary to perform the Services, where permitted in writing by the City or where required by law.

17.0 Agreement for Services

17.1 This is an agreement for the performance of services and the Service Provider is engaged under the agreement as an independent contractor for the sole purpose of providing the Services. Except as is otherwise expressly prescribed in this agreement, neither the Service Provider nor any of its employees or contractors is engaged by the City as an agent of the City. The Service Provider is solely responsible for any and all remuneration and benefits payable to its employees and contractors, and all payments or deductions required to be made by any enactment, including those required for Canada Pension Plan, employment insurance, workers' compensation, employer health tax and income tax. This agreement does not create a joint venture or partnership.

18.0 Conflict of Interest

18.1 The Service Provider must not perform, for gain, any services for any person other than the City, or have an interest in any contract other than this agreement, if the City determines, acting reasonably, that performance of the Services, or the Service Provider's interest in the contract, creates a conflict of interest between the obligations of the Service Provider to the other person or between the obligations of the Service Provider to the City under this agreement and the Service Provider's pecuniary interest.

19.0 Assignment

19.1 No part of this agreement may be assigned or subcontracted by the Service Provider without the prior written consent of the City, and any assignment or subcontract made without that consent constitutes a breach by the Service Provider of this agreement, and the Service Provider agrees that, among other things, the City may refuse its consent if the City, in its sole discretion, determines that the proposed assignee or subcontractor has not got the skill, experience or corporate resources necessary to perform the Services. A permitted subcontract does not relieve the Service Provider from any obligation already incurred or accrued under this agreement or impose any liability upon the City.

20.0 Time of the Essence

20.1 Time is of the essence of this agreement.

21.0 Alternative Rights and Remedies

21.1 Exercise by a party of any right or remedy of that party, whether granted in or under this agreement or at law or equity, does not limit or affect any other right or remedy of any kind, whatever its sources, that the party may have against the other party and does

not affect the right of the party exercising the right or remedy to exercise other rights or remedies against the other party.

22.0 Notice

22.1 Any notice, direction, demand, approval, certificate or waiver which may be or is required to be given under this agreement must be in writing and delivered personally or by courier or sent by e-mail, addressed as follows:

(a) To the City:

City of Langley

E-mail Address: dleite@langleycity.ca

Attention: Darrin Leite, CPA, CA, Director of Corporate Services

(b) To the Service Provider

Discover Langley City

Email: info@downtownlangley.com

Attention: Teri James, Executive Director

Or to such other address, or e-mail address of which notice has been given as provided in this section.

22.2 Any notice, direction, demand, approval or waiver delivered is to be considered given on the next business day after it is dispatched for delivery. Any notice, direction, demand, approval or waiver sent by e-mail is to be considered given on the day that it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

23.0 Interpretation and Governing Law

23.1 In this agreement:

(a) Reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

(b) Reference to a particular numbered section or Schedule is a reference to the correspondingly numbered section or Schedule of this agreement;

- (c) The word “enactment” has the meaning given to it in the Interpretation Act (British Columbia) on the reference date of this agreement;
- (d) Reference to any enactment is a reference to that enactment as amended, unless otherwise expressly provided;
- (e) Reference to a month is a reference to a calendar month; and
- (f) Section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement.

23.2 This agreement is governed by, and is to be interpreted according to, the laws of British Columbia.

24.0 Binding on Successors

24.1 This agreement is binding upon the parties and their respective successors, trustees, administrators and receivers, despite any rule of law or equity to the contrary.

25.0 Entire Agreement

25.1 This agreement is the entire agreement between the parties and it terminates and supersedes all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this agreement.

26.0 Waiver

26.1 Waiver of any default by either party must be express and in writing to be effective, and a waiver of a particular default does not waive any other default.

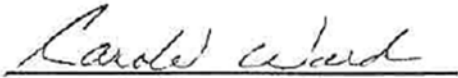
As evidence of the agreement of the parties to be bound by the above terms and conditions of this agreement, the parties have executed this agreement below, on the respective dates written below.

CITY OF LANGLEY by its authorized signatories:

Francis Cheung, Chief Administrative Officer

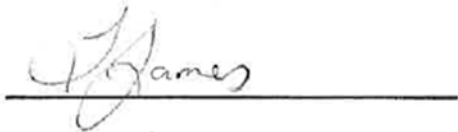
Kelly Kenney, Corporate Officer

DOWNTOWN LANGLEY BUSINESS ASSOCIATION
by its authorized signatories:



Name: Carole Ward

C/S



Name: Teri James

Date Executed: _____, 2021