

DOOR COUNTY TOURISM ZONE

Section 66.06 1 5(lm), Stats.

ENTITY AGREEMENT

By and Between

DOOR COUNTY TOURISM ZONE
COMMISSION

and

DOOR COUNTY VISITOR BUREAU, INC.
(d/b/a "Destination Door County")
a Wisconsin Non-Profit Corporation

(2022)

DOOR COUNTY TOURISM ZONE ENTITY AGREEMENT

2022

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DOOR COUNTY TOURISM ZONE

ENTITY AGREEMENT

2022

This ENTITY AGREEMENT is entered into effective as of the date set forth herein below by and between the **DOOR COUNTY TOURISM ZONE COMMISSION**, a local governmental unit and political subdivision and body public and corporate of the State of Wisconsin located in Sister Bay, Wisconsin (the "Commission") and the **DOOR COUNTY VISITOR BUREAU, INC.**, (d/b/a "Destination Door County") a Wisconsin non-profit corporation located in Sturgeon Bay, Wisconsin (the "Bureau"), pursuant to the provisions of Sec. 66.0615, Wis. Stats.

RECITALS

WHEREAS, under and pursuant to the provisions of Sec. 66.0615, Wis. Stats., the municipal governing bodies located in Door County, Wisconsin established a "tourism zone" encompassing the combined corporate municipal boundaries of Door County, Wisconsin, known and referred to as the "Door County Tourism Zone."

WHEREAS, pursuant to the provisions of Sec. 66.0615, Wis. Stats., the municipal governing bodies located in Door County, Wisconsin also adopted and imposed a local room tax throughout the Door County Tourism Zone on the sales price from selling or furnishing, at retail rooms or lodging to transients by hotelkeepers, motel operators, marketplace providers, owners of short-term rentals, and other persons or retailers selling or furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations which tax is imposed on and collected by the lodging provider from the transient lodger; and

WHEREAS, the Commission was organized by the Door County Municipalities pursuant to the provisions of Sec. 66.0615, Wis. Stats., to administer the room taxes imposed by those Door County Municipalities and to coordinate tourism promotion and tourism development by various municipalities in the Door County Tourism Zone; and

WHEREAS, pursuant to Sec. 66.0615(1m)(d), Wis. Stats., at least seventy (70%) percent of the room tax collected by the Door County Municipalities must be spent on tourism promotion and tourism development; and

WHEREAS, pursuant to Sec. 66.0615(1m)(d), Wis. Stats., the Commission is required to use the room tax revenue that it receives from the Door County Municipalities

for tourism promotion and tourism development as defined by statute, in the tourism zone; and

WHEREAS, pursuant to Sec. 66.0615(1m)(b)(4), Wis. Stats., the Commission is required to contract with a tourism entity, as that term is defined in the statute, from the municipalities in the zone to obtain staff, support services and assistance in developing and implementing programs to promote the zone to visitors.

WHEREAS, pursuant to Sec. 66.0615(1)(f), Wis. Stats., to qualify as a statutory tourism entity, the tourism entity organization must be a nonprofit organization that came into existence before January 1, 2015, spends at least 51 percent of its revenues on tourism promotion and tourism development, and provides destination marketing staff and services for the tourism industry in a municipality located within the tourism zone; and

WHEREAS, the Bureau is a Wisconsin nonprofit organization located in Sturgeon Bay, Wisconsin that came into existence before January 1, 2015 that spends at least 51 percent of its revenues on tourism promotion and tourism development, and provides destination marketing staff and services for the tourism industry; and

WHEREAS the Commission is desirous of retaining the services of the Bureau as a "tourism entity" under the provisions of Sec. 66.0615(1)(f), Wis. Stats., to provide tourism promotion and tourism development, to provide marketing staff and support services, and for the development and implementation of programs to promote the Door County Tourism Zone to visitors and the Bureau is desirous of and providing such services under and pursuant to the terms, covenants and conditions of this Entity Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I

PURPOSE

The tourism industry is a significant part of the economies of the Door County Municipalities. The continued sustainable growth of tourism throughout Door County is necessary for both the current and long-term economic wellbeing of the Door County Municipalities. The purposes of this Entity Agreement are:

- (a) To create a framework for a cooperative working arrangement between the Commission and the Bureau to develop and implement a sustainable tourism promotion and tourism development program for the Tourism Zone during the Term of this Entity Agreement.

- (b) For the Commission to retain the services of the Bureau for staff, support services and assistance in developing and implementing programs to promote the zone to visitors pursuant to Sec. 66.0615(1m)(b)(4), Wis. Stats.
- (c) To set forth the respective responsibilities, duties and obligations of the Parties relating to the provision of services, support and development and implementation of programs to promote the zone to visitors pursuant to Sec. 66.0615(1m)(b)(4), Wis. Stats.

ARTICLE II
DEFINITIONS

Section 2.1 DEFINITIONS. The following words and phrases shall have the following meanings when used in this Contract, unless the context clearly indicates a different meaning is intended.

- (a) "Agreement" shall mean this Entity Agreement.
- (b) "Bureau" shall mean the DOOR COUNTY VISITOR BUREAU, INC. (d/b/a "Destination Door County") of Sturgeon Bay, Wisconsin.
- (c) "Commission" shall mean the DOOR COUNTY TOURISM ZONE COMMISSION of Sister Bay, Wisconsin.
- (d) "Door County Municipalities" shall mean the nineteen (19) local municipalities in Door County, Wisconsin who organized and formed the Door County Tourism Zone and established the Door County Tourism Zone Commission.
- (e) "Effective Date" shall mean May 1, 2022.
- (f) "Entity Agreement" shall mean this Agreement.
- (g) "Room Tax" shall mean the tax imposed by ordinances adopted by the Door County Municipalities pursuant to Sec. 66.0615, Wis. Stats., on the sales price from selling or furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators, marketplace providers, owners of short-term rentals, and other persons or retailers selling or furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. A tax imposed under this paragraph may be collected from the consumer or user,

but may not be imposed on sales to the federal government and persons listed under Sec. 77.54 (9a), Wis. Stats.

- (h) "Tourism Promotion and Tourism Development" shall mean any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment subject to the room tax within the Tourism Zone:
 - 1. Marketing projects, including advertising media buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motorcoach groups.
 - 2. Transient tourist informational services.
 - 3. Tangible municipal development, including a convention center.
- (i) "Tourism Zone" shall mean the Door County Tourism Zone as established by the Door County Municipalities.

Section 2.2 USE OF PHRASES; RULES OF CONSTRUCTION. The following provisions shall be applied wherever appropriate herein:

- (a) "Herein", "hereby", "hereunder", "hereof" and other equivalent words refer to this Agreement as an entirety and not solely to the particular portion of this Agreement in which such word is used.
- (b) The definitions set forth in Section 2.1 hereof shall be deemed applicable whether the words defined are used in the singular or plural.

ARTICLE III

APPOINTMENT AND TERM

Section 3.1 APPOINTMENT. For the Term of this Entity Agreement, the Commission hereby appoints the Bureau as the "Tourism Entity" for the Door County Tourism Zone under the provisions of Sec. 66.0615(lm)(b)(4), Wis. Stats., subject to the terms, covenants and conditions provided herein.

Section 3.2 TERM. The term of this Entity Agreement shall begin as of the Effective Date hereof and run for a term of three (3) years from that date.

Section 3.3 RENEWAL. This Entity Agreement will automatically renew for successive three (3) year terms unless otherwise terminated or amended in the manner made and provided in Article VII hereof.

ARTICLE IV

TOURISM PROMOTION AND TOURISM DEVELOPMENT

Section 4.1 COOPERATION. The Commission and the Bureau shall work together cooperatively to develop sustainable tourism promotion and development goals and objectives of the Commission.

Section 4.2. TOURISM PROMOTION AND TOURISM DEVELOPMENT GOALS AND OBJECTIVES.

- (a) The Parties will create a joint Strategic Planning Committee ("SPC") that will meet before May 1 of each year during the Term of the Agreement for the purpose of discussing, developing and proposing tourism promotion and tourism development goals and objectives for the following three (3) years (the "Goals and Objectives"). The SPC shall consist of up to 4 members of each Party with each Party's members being selected annually by that Party's board. The SPC may engage in the solicitation, gathering and analysis of data related to the satisfaction of the Door County Municipalities with tourism and the impact of tourism within the Tourism Zone.
- (b) By September 1 of each year during the Term of the Agreement, after considering the suggestions from the SPC, the Bureau shall present to the Commission with a review of the effectiveness of the previously approved Goals and Objectives over the previous year and any revised Goals and Objectives for future tourism promotion and tourism development in the Tourism Zone. The proposed Goals and Objectives shall be subject to final approval by the Commission in conjunction with the Bureau's Budget.

Section 4.3 STRATEGIC MARKETING PLANS. Based upon the Goals and Objectives determined by the Commission under Section 4.2(b) on or before September 1st of each year during the Term of this Entity Agreement, the Bureau shall develop and provide the Commission with a strategic marketing plan covering the following calendar year for promoting and implementing the approved Goals and Objectives ("Strategic Marketing Plan"). The Strategic Marketing Plan shall include market strategies for implementing the Goals and Objectives as well as a time line for implementing those strategies and a set of key performance identifiers to monitor the success of the Goals and Objectives.

Section 4.4 ANNUAL BUDGET. At the Commission's November Commission meeting during each year of the Term of this Agreement, the Bureau shall provide the Commission, for its approval, an annual budget for the use and application of the Room Tax revenues allocated to the Bureau hereunder which Budget shall be based upon the Commission's proposed budget for the same time period. The proposed budget shall provide for the provision of the Bureau's services, the implementation of the Strategic Marketing Plan and other legal expenditures of the Room Tax revenues allocated to the Bureau hereunder. The Bureau's Annual Budget shall be approved by the Commission no later than December 31st of each year during the Term of this Agreement.

ARTICLE V

COVENANTS OF BUREAU

Section 5.1 DUE ORGANIZATION. The Bureau is a Wisconsin Non-Profit Corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has all requisite corporate power and authority to operate, to carry on its business as presently conducted and as proposed to be conducted under this Entity Agreement; and, to carry out the transactions contemplated by this Agreement. During the Term of this Agreement the Bureau will remain a nonprofit organization that, spends at least 51 percent of its revenues on tourism promotion and tourism development in order to maintain its status as a qualified "tourism entity" under the provisions of Sec. 66.0615(1), Wis. Stats.

Section 5.2 BOARD OF DIRECTORS. The Bureau will appoint to the Executive Board of its Board of Directors an *ex officio* member designated by the Commission who is a duly appointed member of the Commission. The *ex officio* member may attend meetings of the Bureau's Executive Committee except for closed sessions related to litigation, advice from legal counsel, personnel matters or contract negotiations.

Section 5.3 BUREAU EXECUTIVE BOARD MEETINGS. The Bureau recognizes the importance of transparent governance and will hold monthly board and/or executive committee meetings that are open to the public, except for closed sessions related to litigation, advice from legal counsel, personnel matters, or contract negotiations. Meeting agendas shall be publicly posted on the Bureau's website at least twenty-four (24) hours in advance for regularly scheduled meetings and at least two (2) hours in advance for emergency meetings. Meeting minutes will also be posted on the Bureau's website when those minutes have been approved.

Section 5.4 STATUS REPORTING. During the Term of this Agreement, the Bureau shall provide the Commission with quarterly reports as to the following:

- (a) The status and effectiveness of approved Marketing Plan and its programs and strategies.
- (b) The status of the approved strategic marketing budget.

Section 5.5 ASSISTANCE WITH REPORTS TO DOOR COUNTY MUNICIPALITIES. The Bureau shall assist the Commission in preparing the annual report to each municipality, as required under Sec. 66.0615(1m)(d)(4), Wis. Stats., identifying the purposes for which Room Tax Revenues were spent. The report shall include where the money received by the Bureau from the Commission was spent, the return on investment and the success in achieving the approved Goals and Objectives for that year.

Section 5.6 COMMUNITY ENGAGEMENT. The Bureau shall, on no less than an annual basis, engage with the Door County Municipalities by providing reports and status updates on the current marketing program and related tourism promotion, including, but not limited to, municipal investment as it relates to overnight stays, along with an update from local partner community business associations. The community engagement obligation hereunder is in addition to the annual report each municipality is to receive from the Commission under Sec. 66.0615(1m)(d)(4), Wis.Stats.

Section 5.7 ANNUAL AUDIT. The Bureau shall engage and conduct an annual financial audit by a responsible auditing firm and shall provide a copy of that audit to the Commission. The Commission may make recommendations for information or reports to be contained in future audits. The Bureau shall follow, adopt and incorporate into its financial operations recommendations made and provided by the auditor related to generally accepted accounting practices.

ARTICLE VI

COVENANTS OF THE COMMISSION

Section 6.1 BOARD MEMBER APPOINTMENT. The Commission shall annually appoint a duly appointed member of the Commission to serve as an *ex officio* member of Bureau's Executive Board. The *ex officio* member may attend meetings of the Bureau's Executive Committee except for closed sessions related to litigation, advice from legal counsel, personnel matters or contract negotiations.

Section 6.2 DISBURSEMENT OF FUNDS. The Commission shall disburse seventy (70%) percent of collected Room Tax Revenues to the Bureau consistent with the annual budget adopted by the Bureau and approved by the Commission. Disbursement hereunder shall be made on a monthly basis consistent with the Annual Budget and Reserve Fund procedures established herein.

- (a) The Parties acknowledge and agree that the approved Annual Budget is based on an estimate of the Room Taxes to be collected; and, that the Commission has no obligation to make disbursements beyond the approved Annual Budget or the actual Room Tax revenues collected by the Commission, whichever is less.
- (b) The Commission shall distribute to the Bureau seventy (70%) percent of the monthly Room Tax Revenues collected by the Commission, subject to the following conditions:
 - 1. The Bureau provides the Commission with quarterly financial statements in sufficient detail as determined by the Commission no later than forty (40) days after the end of the quarter;
 - 2. The Bureau shall provide the Commission with a copy of the Bureau's Annual Audit itemizing the room tax revenues and expenses; and
 - 3. The Commission has sufficient cash reserves to pay the Commission's current and next month's estimated expenses.
- (c) All monthly Room Tax revenue collected by the Commission that must be spent on Tourism Promotion or Tourism Development that is in excess to the amount provided in the Annual Budget for that month shall be retained by the Commission in a Reserve Fund. Funds accumulated in the Commission's Reserve Fund need not be expended in the year in which they were collected and may be used in the succeeding year budget cycle. The Bureau may, from time-to-time present special non-budgeted proposals for application and use of funds in the Reserve Fund. The disbursement of funds in the Reserve Fund to the Bureau shall be subject to approval by the Commission.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1 GOVERNING LAW AND VENUE. This Agreement and the rights of the Parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. All actions involving breach of this Agreement shall be venued in Door County, Wisconsin.

Section 7.2 SEVERABILITY IN ABSENCE OF WRITTEN AMENDMENT. In the event that any provision of this Agreement, or any part thereof, is held by a court of competent jurisdiction or any other Governmental Authority to be invalid, ineffective or

unenforceable, and in the reasonable opinion of either Party such event invalidates the purpose or intent of this Agreement, then the balance of this Agreement shall survive only to the extent that the Parties agree, in writing, to a mutually-satisfactory amendment by which they are able to satisfy the intent of this Agreement by alternative means. If, under such circumstances and after good faith negotiations, the Parties are unable to reach such a mutually-acceptable written amendment to satisfy the intent of the Agreement, either Party may utilize the termination provisions of Section 7.11(c) hereof.

Section 7.3 CHANGES IN LAWS. Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time-to-time hereafter.

Section 7.4 DISPUTE RESOLUTION. The Parties shall provide written notice of a dispute within a reasonable time after the event giving rise to the dispute. The Parties agree to negotiate any dispute between them in good faith for a period of 30 days following such notice. The Parties may agree to submit the dispute to mediation but mediation shall not be required as a prerequisite to initiating litigation to enforce the Agreement.

Section 7.5 ACCOUNTING AND AUDIT. The Parties acknowledge that the funds funding this Entity Agreement are public funds derived from the statutory authority of the Municipalities to levy a tax. As such, the Parties shall have the right throughout the Term of this Entity Agreement, upon reasonable prior notice, to audit the other Party's books and record to the limited extent necessary to verify the basis for any claim by either of the Parties for payments hereunder or to determine the other Party's compliance with the terms of this Entity Agreement. The audited Party shall make such records available at its office during normal business hours and the auditing Party shall reimburse the other Party for reasonable costs incurred by the audited Party by the audit, as supported by appropriate documentation.

Section 7.6 INTERPRETATION. This Agreement shall be interpreted as though jointlyrafted by the Parties.

Section 7.7 HEADINGS. The headings, titles or captions contained in this Agreement have been inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

Section 7.8 NO THIRD-PARTY BENEFICIARIES. The Commission recognizes that the Bureau will enter into contracts for tourism marketing services based upon the authority granted to Bureau and consistent with the Annual Budget. Except as otherwise explicitly provide by this Agreement, this Agreement does not create any third-party benefits to any person or entity other than the Parties and is solely for the consideration herein expressed.

Section 7.9 SUCCESSORS. This Agreement shall benefit and be binding upon the Parties' successors and permitted assigns.

Section 7.10 FURTHER ACTION. Each Party agrees from time to time to execute and deliver such further instruments, and to take such further action not inconsistent with the provision of this Agreement, as may reasonably be necessary in order to fully perform and carry out the terms and intent of the Agreement.

Section 7.11 AMENDMENTS AND TERMINATION.

- (a) This Entity Agreement may not be modified or amended except by a written instrument executed by both Parties.
- (b) Beginning in 2024, and continuing each year thereafter, by March 1 either Party may provide written notice to the other of the Party's intent to propose amendments to the Agreement. Following such notice, the Parties agree to negotiate in good faith for a period of sixty (60) days to develop mutually agreed amendments to this Agreement.
- (c) Either Party may terminate this Agreement at any time upon one-hundred eighty (180) days prior written notice to the other.
- (d) In the event of any change to Sec. 66.0615, Wis. Stats., governing the imposition, collection or disbursement of Room Tax Revenues, or the responsibilities or obligations of the Door County Municipalities, the Commission or the Bureau, the Parties agrees to negotiate in good faith mutually agreed upon amendments to this Agreement that are consistent with the changes to Sec. 66.0615, Wis. Stats.

Section 7.12 EXECUTION IN COUNTERPARTS. This Entity Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same Agreement.

Section 7.13 ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and matter related thereto, and does hereby supersede and render null and void and of no further force or effect any and all prior agreements, drafts of agreements and understandings between the Parties.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers and representatives set their hands and affixed their seals on the date set forth below their name.

Date: _____

DOOR COUNTY TOURISM ZONE
COMMISSION

By: _____

Josh Van Lieshout, Chair

By: _____

Craig Nedderson, Secretary

Date: _____

DOOR COUNTY VISITOR BUREAU,
INC

By: _____

Chairperson

By: _____

Secretary