

AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is made as of the date next to the last signature hereto (the "Effective Date") by and between **County of San Luis Obispo** (hereinafter "County"), and **San Luis Obispo County Visitors and Conference Bureau, Incorporated, a California corporation doing business as Visit San Luis Obispo County** (hereinafter "Contractor"), with reference to the following facts.

RECITALS

WHEREAS, on June 10, 2015, the County Board of Supervisors ("Board") approved the formation of the San Luis Obispo County Tourism Marketing District (hereinafter "TMD") in accordance with the provisions of Streets and Highways Code §36600 et seq. – Property and Business Improvement District Law of 1994 (hereinafter "1994 Act"); and

WHEREAS, in accordance with the 1994 Act, the assessments collected as a funding mechanism for the TMD ("Assessments") are required to be expended in accordance with the San Luis Obispo County TMD Management District Plan approved by the Board (hereinafter "Plan"); and

WHEREAS, the Plan provides for the County to contract with Contractor to act as the Owners' Association of the TMD in providing the marketing and tourist serving programs for the countywide Assessments allocated for that purpose under the Plan; and

WHEREAS, Contractor is willing, able and capable to provide the desired services to the County under the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Visit San Luis Obispo County Specified Services.

Contractor shall provide to County those services, and meet all reporting and other requirements, as set forth in the in the Management District Plan approved by the Board of Supervisors on June 10, 2015. A more detailed scope of work with measurable results, outcomes and outputs shall be submitted by Contractor to the County no later than December 31, 2015. Contractor shall provide a detailed operating budget that provides line item details pertaining to revenues and expenditures.

1.2 Creative Works and Intellectual Property.

All trademarks and service marks developed on the County's behalf during the term of this Agreement are and shall remain the County's exclusive property. Contractor is responsible for ensuring that any work completed can be trademark and/or copyright protected. The parties understand that, subject to the confidentiality obligations set forth herein and pursuant to applicable law, Contractor retains the right at all times to use any creative works developed by Contractor as examples of Contractor's work. Each party agrees to execute any such further documents as may be necessary or appropriate to protect or enforce the rights set forth in this paragraph.

1.3 Assigned Personnel.

In the event that Contractor has any employees and desires to have them assist with the work as described in Paragraph 1.1, Contractor shall assign only competent personnel to perform work hereunder.

2. Time and Manner of Collection of Assessments.

The Assessments to fund the activities and improvements for the TMD will be collected at the same time and in the same manner as are the transient occupancy taxes the assessed lodging businesses are subject to, and in accordance with Streets and Highways Code §36631. An administrative fee of up to two (2) percent may be retained by the collecting jurisdiction. In the event a lodging business does not pay the Assessment owing, the Assessment shall be a debt owing to the TMD and the lodging business shall be liable for the debt and subject to the applicable jurisdiction's penalties and interest for transient occupancy taxes. The County and each city shall forward the Assessments collected to Contractor within thirty (30) days of collection or receipt.

Auditing and Accounting.

Since the funds are being paid prior to proof of expenditure, the following accounting process is required to ensure proper controls are in place for safeguarding the funds:

2.1 All revenues and expenditures related to the Assessments and the TMD shall be segregated in a separate account and shall not be commingled with any other funds or accounts maintained by Contractor. All reports, budgets, accountings and records of the TMD shall be kept separate and distinct from non-TMD activities by Contractor.

2.2 Contractor must keep detailed records (copies of invoices, salary records, any manual calculations considered in use of the funds) of expenditures for which the Assessments are being used.

2.3 Contractor shall provide financial reports on a monthly basis to the County Administrator.

2.4 Within 60 days after each fiscal year end (June 30), Contractor shall submit to the County Administrator an annual report that will include a complete

accounting of Assessment revenues received, detailed expenditures paid, and the surplus or deficit to be carried over to the following year.

Upon dissolution of the TMD, payments associated with the quarter activity prior to the dissolution date will be held until proof of expenditure is provided. Payments shall be made within thirty (30) days of receipt of proof of expenditure. As such, a full accounting of that current Assessment year will be submitted to the County's Auditor-Controller-Treasurer-Tax Collector for review to verify the current surplus or deficit. All allowable expenditures will be honored on a reimbursement basis until all expenditures through the dissolution date are paid. Any remaining funds not allocated to the Contractor will be returned to the lodging businesses remitting the Assessment in proportion to their contributions over the prior 12 month period.

3. Annual Audit of TMD

Contractor shall maintain such records and accounts in accordance with general accounting practices. In addition, Contractor shall maintain such records and accounts as may be required by the County for no less than seven (7) years. Contractor shall have its financial statements audited annually by an independent certified public accountant licensed by the State of California and approved in advance by the County's Auditor-Controller-Treasurer-Tax Collector. Said audit shall be delivered to the County within thirty (30) days after the completion of the audit, and no later than June 20th of the year following the date of the financial statements.

The County shall have the right through its representative, and at all reasonable times, to inspect such books and records; and Contractor hereby agrees that all such records and instruments shall be available to the County. All State and Federal tax returns of Contractor insofar as this Agreement is concerned shall also be made available to the County for review if requested.

All expenses associated with said audits shall be borne by Contractor and may be paid from TMD funds.

4. Term of Agreement

The term of this Agreement shall be for five (5) years, beginning July 1, 2015 through June 30, 2020, unless terminated earlier in accordance with Paragraph 11 (Termination for Cause), except that the obligations of the parties under Paragraph 18 (Insurance) and Paragraph 15 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of Contractor to County shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraph 8 (Confidentiality), Paragraph 7.4 (Taxes) and Paragraph 6.5 (Access to Records/Retention).

5. Prosecution of Work.

5.1 Commencement of Work.

The execution of this Agreement by the County shall constitute Contractor authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein.

5.2 Independent Contractor.

Contractor shall perform this Agreement as an independent contractor. Contractor and the offices, agendas and employees of Contractor are not, and shall not be deemed, County employees for any purpose, including workers' compensation and employee benefits. Contractor shall, at Contractor's own risk and expense, determine the method and manner by which duties imposed on Contractor by this Agreement shall be performed; provided, however, that County may inspect work performed by Contractor. County shall not deduct or withhold any amounts whatsoever from the assessment paid to Contractor, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, Contractor shall be solely responsible for all such payments.

5.3 Specific Performance.

It is agreed that Contractor, including the agents, employees, or subcontractors of Contractor, shall be the sole providers of the services required by this Agreement. Because the services to be performed by Contractor under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, County, in addition to any other rights or remedies which County may process, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by Contractor.

5.4 Taxes.

Except as elsewhere herein provided, Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold County and the TMD harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations.

5.5 Access to Records/Retention.

County, or its duly authorized representatives, shall have access to any books, documents, papers and records of Contractor which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, Contractor shall maintain all required records for at least seven (7) years after County makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

5.6 Records Maintenance.

Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County at any reasonable time.

5.7 Conflict of Interest.

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

5.8 Nondiscrimination.

Contractor shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in the Agreement are incorporated by this reference.

6. Notices.

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five (5) business days following the date of deposit, whichever is earlier.

COUNTY

Nikki J. Schmidt
County Administrative Office
County of San Luis Obispo
1055 Monterey Street, Room D430
San Luis Obispo CA 93408

CONTRACTOR

Chuck Davison
San Luis Obispo County Visitors and Conference Bureau
dba Visit San Luis Obispo County
1334 Marsh Street
San Luis Obispo CA 93401

7. Confidentiality.

Confidential information is defined as all information disclosed to Contractor which relates to County's past, present, and future activities, as well as activities under this Agreement. Contractor shall hold all such information as Contractor may receive, if any, in trust and confidence, except with the prior written approval of County, expressed through its County Administrator. Upon cancellation or expiration of this Agreement, Contractor shall return to County all written and descriptive matter which contains any such confidential information, except that Contractor may retain for its files a copy of Contractor's work product if such product has been made available to the public by County.

8. Termination of Agreement for Cause.

This Agreement may be terminated by County upon finding that Contractor has misappropriated funds, committed malfeasance or committed a violation of law in connection with its management of the TMD including violations of the Plan. County's right to terminate shall arise after a public hearing held in procedural compliance with the requirements of Streets and Highways Code §36670.

9. No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

10. Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of the State of California. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of San Luis Obispo.

11. Indemnification.

Contractor shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation or work hereunder or to the formation of the TMD. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

12. Non-Assignment of Contract.

Inasmuch as this Contract is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate or sublet any interest therein without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by Contractor, or to perform any of the remaining services required under this Agreement within the same time frame required of Contractor shall be deemed to be reasonable grounds for County to withhold its consent to assignment. For purposes of this subparagraph, the consent of County may be given by the County Administrator.

If Contractor changes its status during the term of this Agreement from or that of a corporation, such change in organization status shall be viewed as an attempted assignment of this Agreement by Contractor. Failure of Contractor to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

13. Severability.

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

14. Insurance.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors.

Minimum Scope and Limit of Insurance.

Coverage shall be at least as broad as:

14.1 Commercial General Liability Insurance Policy ("CGL")

Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

14.2 Business Automobile Liability Policy ("BAL")

ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

14.3 Workers' Compensation And Employers' Liability Insurance Policy ("WC/EL")

Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the contractor.

14.4 Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

14.5 Additional Insured Status

The County, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

14.6 Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

14.7 Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (ten (10) days for non-payment) has been given to the County.

14.8 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

14.9 Waiver of Subrogation

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

14.10 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

14.11 Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

14.12 Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of *five (5) years after completion of contract work.*

14.13 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

14.14 Verification of Coverage

Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

County of San Luis Obispo
Administrative Office
1055 Monterey Street, #D430
San Luis Obispo CA 93408
Attention: Nikki J. Schmidt, Administrative Analyst

14.15 Subcontractors

Contractor shall require and verify that all subcontractors providing TMD services maintain insurance meeting all the requirements stated herein. Contractor may submit to County a request that insurance requirements for a particular subcontractor be modified, which request may be granted or denied in County's sole discretion.

14.16 Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

COUNTY OF SAN LUIS OBISPO

By: _____

AUTHORIZED BY BOARD ACTION

Dated: _____

San Luis Obispo County Visitors and Conference Bureau, Incorporated,
a California corporation doing business as
Visit San Luis Obispo County

By: Chuck Dawson / Chuck Dawson

Title: President + CEO

Dated: 8/18/15

By: [Signature]

Title: CHAIR KEVIN THIPPS

Dated: 8/18/15

ATTEST

By: _____
Clerk of the Board of Supervisors

DATED: _____

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA L. NEAL
County Counsel

By: [Signature]
Chief Deputy County Counsel

DATED: 8/24/15