

TOURISM PROMOTION AGREEMENT

THIS AGREEMENT made and entered into this 1 day of JULY, 2023, by and between the CALAVERAS VISITORS BUREAU, a California non-profit public benefit corporation, hereinafter referred to as "CVB", and the COUNTY OF CALAVERAS, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, the Calaveras Visitors Bureau is Calaveras County's core tourism promotion organization dedicated to creating long term and sustainable economic growth for the region and its partners through innovative tourism programs, promotions, and partnerships; and

WHEREAS, the County has acknowledged the CVB's unique role in the community for many years and has contributed to the financial support of its operations through sharing a portion of the transient occupancy tax (TOT) collected in the unincorporated areas of the County. This arrangement ensures that visitors to the community help pay a share of the costs associated with the essential governmental services they utilize; and

WHEREAS, Calaveras County voters in 2018 approved an increase in the TOT from 6% to 12%, and as a result, the amount of TOT shared with the CVB has increased significantly and thus warrants establishment of a formal agreement between the CVB and County with a system of accountability for the funds entrusted to the CVB; and

WHEREAS, the CVB and County desire to enter into an Agreement that updates and formalizes responsibilities between both parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM:

The term of the Agreement shall commence on the date first herein referenced above and continue until June 30, 2026, unless cancelled by any party by giving ninety (90) days' written notice to the other party.

County may send written notice to CVB if County believes CVB has defaulted by failing to comply with any term or condition of this Agreement. The written notice shall include a description of CVB's default. If CVB fails to cure the default within thirty (30) days of the date notice was sent, County may immediately terminate this Agreement.

Should CVB engage in failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft, County, at its option, may immediately terminate this Agreement by giving written notification to CVB. The

termination date shall be the date of the notice.

2. CVB RESPONSIBILITIES:

- A. Consistent with its mission, CVB shall dedicate itself to maximizing tourism to and throughout all areas of the unincorporated Calaveras County. This will involve marketing both outside and inside of the County. Marketing outside of the County is intended to attract visitors to the County. Marketing inside of the County is intended to inform visitors of the many opportunities available to them once in the community and thus enhance visitation once here and encourage return visits.
- B. CVB shall prepare annual marketing plans, align its annual budgets and programs consistent with those plans, and share its plans with County.
- C. CVB shall submit and present mid-year reports by CVB representatives highlighting CVB's marketing actions and budget performance. These reports will be given to the County Board of Supervisors no later than February of each year.
- D. CVB shall submit drafts of its annual marketing plans and budgets to the County for review and comment no later than March of each year prior to adoption of same. The CVB shall consider County comments when adopting final plans and budgets no later than June of each year.
- E. CVB shall provide annual reports to the County regarding: 1) the delivery and accomplishment of its prior year marketing plan; 2) delivery and performance on its prior year budget; and 3) the most recent financial reports (e.g. balance sheet and profit and loss statement). These reports will be given no later than August of each year.
- F. CVB shall allow one representative from the County to participate in the meetings of its governing board, as an Advisor to its board. The County Advisor will be afforded the same rights and courtesies as those extended to CVB Board members except the County Advisor will not have the right to vote on CVB governing board matters.

3. COUNTY RESPONSIBILITIES:

- A. County shall provide comments on draft marketing plans and budgets as outlined in Section 2.D. above within thirty (30) days of receipt of same.
- B. County shall appoint a representative to serve as an Advisor to the CVB governing board as outlined in Section 2.F. above.
- C. In consideration of CVB's services outlined in Section 2 above, the County shall, as part of its annual budget process, annually set a fixed amount to be paid to the CVB. Said sum shall be paid in four equal installments on or before the

last working day of January, April, July and October. These payment dates correspond with the TOT reporting periods ending on December 31, March 31, June 30 and September 30. The County shall have the sole authority to determine the annual amount.

The County makes the finding that there is a public benefit to making such payments to the CVB due to the following: 1) the efforts of the CVB have a direct impact on the amount of visitation to Calaveras County which in turn generates local taxes (e.g., TOT, sales tax, etc.) received by the County; 2) these increased local taxes help fund a wide array of services including essential services (e.g. law enforcement, fire protection, road maintenance, emergency services, animal control, etc.) provided directly by the County or facilitated by subsidy to local fire districts; and 3) the above ensures that visitors to the County help offset the cost of services they utilize.

4. NOTICE

Any and all notices, reports or other communications to be given to County or CVB shall be given to the persons representing the respective parties at the following addresses:

County

County Executive Officer
County of Calaveras
891 Mountain Ranch
San Andreas, CA. 95349

CVB

Board President
Calaveras Visitors Bureau
753 S. Main Street
Angels Camp, CA. 95222

5. INDEPENDENT CONTRACTOR

CVB understands that it, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the County. CVB shall obtain no rights to retirement benefits or other benefits which accrue to County's employees, and CVB hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, or subcontractors hired or retained by CVB are performing in that capacity for and on behalf of CVB and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against CVB by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

6. INSURANCE

- a. CVB shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County. CVB shall provide notice to the County by registered mail, return receipt requested, thirty (30) days prior to cancellation or material change for all of the following

stated insurance policies:

1. **Workers' Compensation Coverage** - Workers' Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).
 11. **General Liability Coverage** - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.
- b. **Policy Endorsements:** Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:
1. The County, their elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds ("County additional insureds").
 - ii. This policy shall be considered, and include a provision it is, primary as respects the County additional insureds, and shall not include any special limitations to coverage provided to the County additional insureds. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.
 11. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. The insurer waives all rights of subrogation against the County additional insureds.
 - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County additional insureds.
- c. **Failure to Comply:** Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

7. HOLD HARMLESS/INDEMNIFICATION

CVB shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents, and volunteers (collectively, "County") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of CVB, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of CVB. CVB's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that CVB shall not be required to indemnify County for the proportion of liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. Should the CVB choose to hire a single attorney or firm to represent the County, County Counsel will consult and agree on the single legal representative. This indemnification clause shall survive the termination or expiration of this Agreement.

8. ASSIGNMENT

CVB agrees that this Agreement is for the professional services of CVB and it shall not assign, subcontract or sublet any part of this Agreement without the express prior written consent of County. Any assignment without the express prior written consent of the County is VOID.

9. COMPLIANCE

CVB shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to CVB's performance under this Agreement. Specifically, CVB shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

10. PUBLIC RECORDS ACT

CVB is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of CVB to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered

public.

11. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by all parties.

12. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

13. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

14. DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Calaveras, State of California.

15. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

16. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

17. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

18. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

19. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

20. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

21. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

22. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

23. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

24. NO RELIANCE ON REPRESENTATIONS

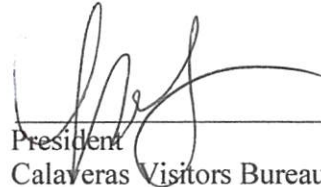
Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY

CVB

Chair
Calaveras County Board of Supervisors



President
Calaveras Visitors Bureau Board

ATTEST:

APPROVED AS TO LEGAL FORM:

Clerk
Board of Supervisors



County Counsel
County of Calaveras