



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-20

For the meeting of: May 31, 2016

Date: May 18, 2016
To: Board of Supervisors
From: Humboldt County Treasurer-Tax Collector
Subject: Airbnb Voluntary Collection Agreement

RECOMMENDATION(S): That the Board of Supervisors approves and executes a Voluntary Collection Agreement (VCA) with Airbnb, Inc. to collect and remit Transient Occupancy Taxes (TOT) on behalf of the third-party individuals or entities that utilize Airbnb's online booking platform for short-term lodging in the county.

SOURCE OF FUNDING: N/A. The VCA will be revenue positive.

DISCUSSION:

Airbnb facilitates short term lodging in Humboldt County whereby Airbnb Hosts (i.e., short-term lodging owners / operators) rent out a room or rooms, a living space, or an entire house for less than thirty days through the internet-based platform that Airbnb maintains. That Airbnb platform, however, makes it nearly impossible for the county to determine the locations of the rentals Airbnb facilitates, short of renting them and then being told of the location. Not knowing the location of these rentals facilitated by Airbnb makes collection efforts of the 10% TOT directly from the owners / operators, as required by Humboldt County Code section 712-3, unreasonably difficult and too costly to collect if that short term lodging is only facilitated through Airbnb.

Since the Tax Collector must treat all tax payers equally under the law, the Tax Collector requested cooperation from Airbnb to either collect and remit TOT directly to the office of the Treasurer-Tax Collector (T-TC); or to provide the T-TC department with addresses of all rentals it facilitates in the unincorporated areas of the county at least quarterly. Otherwise, equal treatment of all short term lodging

Prepared by John Bartholomew *JB*

CAO Approval *Kashia Heis*

REVIEW:

Auditor *MBM*

County Counsel *all*

Personnel

Risk Manager *KW*

Other

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*

- Nays
- Abstain
- Absent

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *May 31, 2016*

By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

operators in the county cannot be achieved.

The VCA (*See* Attachment 1) before your Board is the result of the T-TC's efforts to align short-term lodging facilitated by Airbnb with the Humboldt County Code. Your Board's decision to support these efforts is represented by the approved C-15 agenda item from your meeting on September 1, 2015. (*See* Attachment 2.)

Once executed, the VCA will create a collection arrangement whereby Airbnb will deduct 10% from the gross rent amount of all short term lodging Airbnb facilitates in the unincorporated areas of the county on behalf of the owners / operators that utilize Airbnb's platform, and thereby bring the owners / operators into compliance with the 10% TOT county code requirement. The VCA also stipulates that those TOT amounts collected be remitted to the T-TC on a quarterly basis. Once in force, the VCA will capture the TOT not currently being collected and bring additional revenue to the county.

The VCA does not address the mandated 2% Humboldt County Tourism Business District Assessments (HCTBID) under Humboldt County Resolution No. 12-38. Airbnb has represented that it will not include HCTBID assessment collection in the VCA because the diversity of Tourism Business Improvement District (TBID) agreements across the state cannot currently be technically administered by Airbnb. Once the technical hurdles of collecting all types of TBID assessments have been implemented by Airbnb, the VCA will be amended to include the collection of those HCTBID amounts.

Airbnb Hosts must be notified of contract amendments between themselves and Airbnb prior to any contract changes going into effect. Per Airbnb, that notification process normally takes 2 to 3 weeks. Due to the tight time frame in which these notifications must be completed and in light of the July 1, 2016 effective date of the VCA, Airbnb has requested that your Board approve and execute the VCA before Airbnb executes to allow Airbnb time to address any potential delays in implementation of the TOT collection as of the July 1, 2016 start date. The T-TC requests that the Board accommodate Airbnb's request and sign the VCA under the circumstances to move the agreement forward.

FINANCIAL IMPACT: Positive. Your Board's approval and execution of the VCA on this date will require TOT to be collected by Airbnb on behalf of its hosts to begin as of July 1, 2016 and become payable to the county on September 30, 2016, which is the end of the 1st quarter for the fiscal year. Quarterly payments will then be required to be paid by Airbnb to the county until the VCA is terminated.

This action supports your Board's strategic framework by facilitating a public-private partnership between Airbnb and the county to solve TOT collection compliance problems, as well as by streamlining this growing revenue stream.

OTHER AGENCY INVOLVEMENT: None

ALTERNATIVES TO STAFF RECOMMENDATIONS: The Board could choose not to approve or execute the VCA with Airbnb. This alternative is not recommended because TOT that would have been collected by Airbnb, per the VCA, would then not be collected, nor remitted, to the county.

ATTACHMENTS:

1. Voluntary Collection Agreement
2. Agenda item C-15 from September 1, 2015

ATTACHMENT 1

**VOLUNTARY COLLECTION AGREEMENT
FOR
HUMBOLDT COUNTY TRANSIENT OCCUPANCY TAXES**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated _____, 2016 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and the **COUNTY OF HUMBOLDT**, a political subdivision of the State of California (the “**COUNTY**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform through which a third party desiring to offer an accommodation (a “**Host**”) and a third party desiring to book an accommodation (a “**Guest**”) have the opportunity to communicate, negotiate and consummate a booking transaction for accommodations (“**Booking Transaction**”) pursuant to a direct agreement between Host and Guest to which Airbnb is not a party (the “**Platform**”);

WHEREAS, Airbnb represents that any agreement regarding a Booking Transaction through use of the Platform is between the Host and Guest only, that Airbnb is not a party to such agreements, that a Host exclusively determines the price to be charged, the dates to book such accommodations, the parties with whom to transact and all other material terms of such agreements, that only the Host and not Airbnb has the right and ability to accept and book an accommodation, and that Airbnb does not own any real property and does not have any possessory interest in any real property or accommodations offered by Hosts (including, but not limited to, as an owner, lessee, sublessee, mortgagee in possession, licensee, agent or in any other capacity), and therefore cannot and does not transfer any possessory interest in any property or accommodations to any person;

WHEREAS, Airbnb represents that it provides, through third-party payment processors, a secure payment processing service to permit Hosts to receive payments electronically. When the Host accepts and confirms a Guest's reservation request, Airbnb, acting through third-party payment processors, electronically processes the Guest's payment, which is typically held and released approximately 24 hours after the Guest checks into the Host's property. Airbnb represents that Guests booking accommodations through the Platform pay the Host for such accommodations electronically using the Platform, and such payments are briefly held by Airbnb

typically until twenty-four hours after check-in and then released directly to Hosts (less the applicable service fee);

WHEREAS, Airbnb represents that it is not an owner, proprietor or otherwise “operator” of any “hotel”, “room” or accommodation of any kind, under any and all applicable local, state or federal laws or regulations. Airbnb represents it does not collect or charge “rent” within the meaning of any applicable local, state, or federal laws or regulations. Airbnb represents that it does not rent or have the right to rent rooms, does not book accommodations, does not mark up the prices for accommodations set by Hosts, does not sell or resell accommodations, does not reserve, arrange for, convey or furnish or transfer occupancy of accommodations, does not operate any accommodations, and has not, pursuant to any assignment, contract, agency or otherwise been assigned in whole or part the right to exercise, or exercised any right pursuant to any assignment, contract, agency or otherwise, to operate accommodations, and only provides communications, payment processing and other services through the Platform, receiving only fixed service fees which are a percentage of the price set by Hosts, such service fees collected from the Guest and from the Host, respectively;

WHEREAS, the legal rights, remedies and obligations of Airbnb, Hosts and Guests using the Platform are specified in a document titled “Terms of Service” (the “TOS”) and other policies and procedures available at www.airbnb.com, including, but not limited to, certain TOS provisions to which Hosts and Guests have agreed that when or if Airbnb determines to assist with collection and remittance of occupancy taxes and assessments in a given jurisdiction, users grant Airbnb authority to register, report, collect and remit the applicable occupancy taxes pursuant to an Agreement with an authorized local tax collection agency and the TOS;

WHEREAS, certain Booking Transactions between Hosts and Guests completed on the Platform are subject to the Humboldt County Transient Occupancy Tax (“TOT”), imposed by Chapter 2 of Division 1 of Title VII of the Humboldt County Code as may be amended from time to time;

WHEREAS, the COUNTY, by and through its Treasurer-Tax Collector’s Office, and Airbnb have voluntarily determined to enter into this Agreement in order to facilitate the reporting, collection and remittance of applicable TOT from Hosts and Guests, resulting from Booking Transactions completed by Hosts and Guests on the Platform for occupancy of

accommodations located in unincorporated Humboldt County, in accordance with this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) With respect to Booking Transactions between Hosts and Guests completed on the Platform for accommodations for which TOT is applicable, and during the period in which this Agreement is effective (as defined below), and solely pursuant to the terms and conditions of this Agreement, Airbnb agrees to assume the duties of a TOT “operator” as described in Chapter 2 of the Humboldt County Code (referred to hereinafter as “**Operator**”).

(B) Airbnb neither agrees to undertake, nor undertakes any obligation to assume the duties of an Operator and does not agree to undertake any obligation contractually or otherwise to collect or remit TOT relating to any user’s transaction completed, made or facilitated through any means, or method or other platform, other than the Host or Guest’s use of the Platform. Any obligation assumed by Airbnb pursuant to this Agreement (during any period in which it is effective) shall be limited to users completing Booking Transactions directly between the Guest and Host through their use of the Platform.

PROSPECTIVE COLLECTION OF TOT

(C) Starting on July 1, 2016 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TOT, pursuant to the terms and conditions of this Agreement, at the applicable rate, on completed Booking Transactions for occupancy of accommodations located in unincorporated Humboldt County between a Guest and Host who use the Platform. For the avoidance of doubt, this Agreement shall not extend to any period or transaction prior to the Effective Date or after the termination of this Agreement or to any user’s transaction completed, through any means, method or platform, other than the Platform.

REMITTANCE OF TOT

(D) Airbnb shall reasonably report information on the tax return form prescribed by the COUNTY, including all TOT that is subject to the provisions of this Agreement, and it shall remit all TOT collected from Guests in accordance with this Agreement and the TOS and evidenced on such returns in the time and manner described in Chapter 2 of the Humboldt County Code or as agreed between the Parties in writing.

AIRBNB LIABILITY

(E) On a prospective basis upon the Effective Date of this Agreement, and during any period in which this Agreement is in effect, in accordance with the terms of this Agreement, Airbnb hereby agrees to assume liability for any failure to report, collect and/or remit the correct amount of TOT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with any and all applicable local, state, and federal laws and regulations. However, nothing contained herein nor any action taken pursuant to this Agreement, including, but not limited to, the collection or remittance of TOT, shall impair, restrict or prevent Airbnb from asserting that any TOT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or enforcing any and all rights accorded to it pursuant to law.

(F) During any period in which this Agreement is effective, and Airbnb is not in breach of its obligations hereunder, COUNTY shall audit Airbnb on the basis of TOT returns and supporting documentation pertaining to Booking Transactions covered hereby. COUNTY shall not directly or indirectly audit any individual Guest or Host relating to such Booking Transactions unless and until an audit of Airbnb by COUNTY has been exhausted with the matter unresolved.

(G) With respect to any audit of completed Booking Transactions that are subject to this Agreement during any period in which it is effective, COUNTY shall audit Airbnb on an anonymous numbered account basis. The Parties agree that Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest and/or relating to any Booking Transaction in connection with an audit or otherwise without binding legal process served only after completion of such audit by COUNTY of Airbnb with respect to such Host or Guest. COUNTY agrees that for TOT purposes, within any consecutive forty-eight (48) month period, it will limit its audit of Airbnb and/or any assessment against Airbnb for alleged under collection of TOT to no more than a consecutive twelve (12) month tax period.

(H) COUNTY agrees that pursuant to this Agreement and during the period in which it is effective, Airbnb will register as an Operator for the reporting, collection and remittance of TOT, in connection with its obligations assumed under Chapter 2 of the Humboldt County Code, as set forth in this Agreement. Registration with COUNTY and the issuance of any certificate of authority will be in the name of Airbnb, Inc. at 888 Brannan Street, 4th Floor, San Francisco, CA

94103. Airbnb, Inc. will be the registered taxpayer on behalf of any subsidiary or affiliate of Airbnb, Inc. collecting TOT from Guests.

GUEST AND HOST LIABILITY

(I) During any period in which this Agreement is effective, and solely with respect to a Host's activity on the Platform, said Host shall not be required to individually register with COUNTY to collect, remit and report TOT under Chapter 2 of the Humboldt County Code, on the condition that Airbnb is in compliance with its obligations under this Agreement and Chapter 2 of the Humboldt County Code. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TOT, including any obligation to register with COUNTY to collect, remit and report TOT for transactions completed through any means, method, device or platform other than the Platform, or restrict COUNTY from investigating or enforcing any provision of applicable law against such users for any occupancy arranged directly or through a means other than the Platform.

(J) Nothing in this Agreement shall relieve any Guest or Host of liability for TOT imposed by the Humboldt County Code except as set forth herein, nor limit the COUNTY's authority to hold such Guest or Host responsible for any applicable TOT, penalties and interest for which they may be liable, including, but not limited to, civil and criminal penalties arising from inaccurate, false, and/or misleading representations made to Airbnb or COUNTY by such Guest or Host, whether or not such representations were, in fact, relied upon by Airbnb or COUNTY in complying with its responsibilities under this Agreement.

WAIVER OF RETROACTIVE RECOVERY

(K) The terms of this Agreement under which Airbnb assumes the obligations of an Operator, including registration and the collection and remittance of TOT, shall be prospective only as of the Effective Date and COUNTY expressly waives and relinquishes any right to demand payment of and/or collect TOT or other tax indebtedness, including, but not limited to, penalties, fines, interest or other payments relating to TOT, from Hosts, Guests or Airbnb with respect to any Booking Transactions completed on the Platform prior to the Effective Date. Nothing contained in this Agreement shall impair or prevent COUNTY from collecting alleged indebtedness related to TOT for transactions completed through any means, method, device or platform other than the Platform. In addition, this provision shall not constitute a release or

waiver of any claim, cause of action or indebtedness that COUNTY may have or claim to have against any Host or Guest unrelated to TOT or the matters released herein.

NOTIFICATION TO GUESTS AND HOSTS

(L) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify Hosts that TOT will be collected and remitted to COUNTY as of the Effective Date pursuant to the terms of this Agreement. Airbnb also agrees to notify Guests and Hosts of the amount of TOT collected and remitted on each Booking Transaction. Additionally, the Parties agree that Airbnb may, at its discretion, notify Hosts of the specific provisions relating to Guest and Host Liability (as set forth in paragraphs (I) and (J)) and Waiver of Retroactive Recovery (as set forth in paragraph (K)) of this Agreement.

LIMITATION OF APPLICATION

(M) This Agreement is solely for the purpose of facilitating the administration and collection of the TOT with respect to Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution and implementation of this Agreement by the Parties, including but not limited to, the collection and/or remittance of TOT, shall not be considered an admission or evidence of any issue of law or fact arising under the Humboldt County Code, or any other applicable local, state, or federal laws or regulations. By entering into or acting pursuant to the terms of this Agreement, including, but not limited to, collecting and/or remitting TOT, Airbnb does not waive, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions to, without limitation, (i) contest the validity of any construction of the Humboldt County Code that extends beyond the express terms thereof; (ii) contest that Airbnb is a "operator" as defined in Section 712-2(f) of the Humboldt County Code; (iii) contest that Airbnb is an operator or vendor for any other purpose under any other provision of state, local and/or federal law; (iv) contest that Airbnb "charges", collects, receives or otherwise comes into possession of taxable "rent" as those terms are used in Section 712-2(e) of the Humboldt County Code; or (v) contest that any third party occupies a taxable "Living Space" as used in Section 712-2(b) of the Humboldt County Code.

MODIFICATIONS

(N) This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both Parties. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless made in writing and signed by each Party.

DURATION/TERMINATION

(O) The terms, conditions, and obligations set forth in this Agreement shall apply to Booking Transactions made on or after the Effective Date and shall remain in effect unless terminated in accordance with paragraphs (P) or (Q) below.

(P) COUNTY may terminate this Agreement in the event that Airbnb breaches this Agreement and fails to comply with the terms or conditions set forth herein, or violates any ordinance, regulation, or other law applicable to its performance hereunder, and such default or violation continues for a period of thirty (30) days following written notice hereof. COUNTY reserves the right to seek any applicable legal or equitable redress for Airbnb's failure to comply with the terms and conditions of this Agreement.

(Q) This Agreement may be terminated by either Airbnb or COUNTY without cause, provided that proper notice is given. Proper notice for the purposes of this paragraph means at least 30 days' written notification to the other Party by certified or registered mail and, in the case where Airbnb is the Party seeking to terminate the Agreement, at least 30 days e-mail notification to each Host offering accommodations in Humboldt County through Airbnb's Platform that Airbnb will no longer be collecting and remitting TOT for Booking Transactions subject to this Agreement.

(R) Any termination under this provision, with or without cause, shall not affect the duty of Airbnb to remit to COUNTY any TOT collected from Guests up to and including the effective date of termination of this Agreement, even if not remitted by Airbnb to COUNTY as of the date of termination.

MISCELLANEOUS

(S) CHOICE OF LAW. This Agreement shall be construed and interpreted in accordance with the substantive laws of the State of California without regard to its conflict of law principles. The Parties agree that any dispute arising out of or relating to this Agreement shall be exclusively in the Superior Court of Humboldt County or the United States District Court for the Northern District of California and each Party consents to the exclusive jurisdiction of such courts and waives any and all objections to jurisdiction or venue in such courts or any assertion of inconvenient forum.

(T) MERGER AND INTEGRATION. This Agreement contains all of the terms and conditions agreed upon by the Parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior negotiations, agreements, promises, representations, and understandings, whether oral or written, with respect thereto.

(U) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(V) CALIFORNIA PUBLIC RECORDS ACT. Airbnb hereby acknowledges that COUNTY shall consider this Agreement to be a public record subject to disclosure pursuant to the California Public Records Act (California Government Code sections 6250 *et seq.*) and, further, that the COUNTY must comply with any and all laws, regulations, or other legal requirements applicable to the disclosure of this Agreement, and any and all records, documents and information related thereto, including, but not limited to, the California Public Records Act and the federal Freedom of Information Act. In the event COUNTY receives a request for disclosure of this Agreement, or any other public record, document, or information related thereto, COUNTY agrees to provide Airbnb with reasonable advance written notice via email to the attention of Airbnb’s General Counsel at legal@airbnb.com.

(W) CONFIDENTIALITY. Any proprietary information or personally identifiable data provided to COUNTY by Airbnb, a Host, or a Guest in connection with, relating to or concerning TOT with respect to Booking Transactions on the Platform and proprietary information learned by the COUNTY about Airbnb’s business shall be considered confidential taxpayer information. Unless otherwise required by law or order of the court, or as permitted under the terms of this Agreement or by prior written permission of Airbnb, COUNTY shall not

use or disclose confidential proprietary, taxpayer or personal information transmitted to COUNTY by Airbnb in any matter that would constitute a breach of this Agreement or a violation of local, state, or federal law. At the sole discretion of COUNTY, otherwise confidential information may be disclosed in: (i) any judicial proceeding or administrative proceeding pertaining to tax administration, determination, assessment, collection, or enforcement of any civil or criminal liability arising under Sections 712-13 and 712-14 of the Humboldt County Code, if the confidential information concerns a person who is a party to the proceeding, or the proceeding arose out of, or in connection with determining that person's civil or criminal liability, or the collection of that person's liability with respect to any tax imposed thereunder; (ii) in any situation in which the disclosure of confidential information is reasonably necessary to obtaining information bearing a direct relationship to the determination, assessment, collection, or enforcement of any civil or criminal liability arising under Sections 712-1 through 712-15 of the Humboldt County Code; or (iii) in any situation in which the disclosure of confidential information is necessary for the preparation of any judicial or administrative proceeding pertaining to the administration or enforcement of any civil or criminal liability arising out of Sections 712-1 through 712-15 of the Humboldt County Code. COUNTY will make reasonable efforts to use or disclose only the minimum amount of confidential proprietary, taxpayer, or personal information needed to accomplish the intended purpose of the use or disclosure.

(X) RELATIONSHIP OF THE PARTIES. It is understood that this is an Agreement by and between two independent entities and it is not intended to create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. Both Parties further agree that Airbnb shall not be entitled to any benefits to which COUNTY employees are entitled including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation.

(Y) WAIVER OF DEFAULT AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute or be deemed a waiver of that right or any other right in this Agreement. Other than as expressly stated herein, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(Z) INTERPRETATION. This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

(AA) INDEPENDENT CONSTRUCTION. The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in constructing or interpreting any of the provisions of this Agreement.

(BB) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(CC) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of COUNTY in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms and conditions of this Agreement and all past due fees are paid in full. Any attempt by a Party to assign its rights or obligations in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

(DD) SEVERABILITY. If any provision of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be contrary to law, 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.

(EE) AUTHORITY TO EXECUTE. Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this

Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized.

NOTICES

(FF) Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon actual receipt or refusal on the receipt obtained pursuant to: (i) personal delivery; (ii) the third business day after certified mail, return receipt requested; or (iii) the second business day after sending by overnight mail. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:
Airbnb, Inc.
Attn: Deputy General Counsel
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: legal@airbnb.com

With copy to:
Airbnb, Inc.
Attn: Global Head of Tax
Tax Department
888 Brannan Street, 4th Floor
San Francisco, CA 94103
Email: tax@airbnb.com

To the COUNTY:

Humboldt County Treasurer-Tax Collector
Attn: John Bartholomew
825 5th Street, Room 125
Eureka, CA 95501
Fax: (707) 445-7608

(GG) NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE. Airbnb certifies by its signature below that it is not a Nuclear Weapons Contractor, in that Airbnb is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. Airbnb agrees to notify COUNTY

immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if Airbnb subsequently becomes a Nuclear Weapons Contractor.

(HH) THIRD-PARTY BENEFICIARIES. The Parties hereto do not intend to create any third-party beneficiaries and nothing contained in this Agreement shall be construed to confer any rights or benefits upon any third parties.

(II) NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES. No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

(JJ) SURVIVAL. The duties and obligations of the parties set forth in Paragraph R (Effect of Termination), Paragraph V (California Public Records Act), and Paragraph W (Confidentiality) shall survive expiration or termination of this Agreement.

(Signatures follow on next page)

IN WITNESS WHEREOF, Airbnb and COUNTY have executed this Agreement effective on the date set forth in the introductory clause above.

AIRBNB, INC., a Delaware corporation

By: _____

Beth Adair, Director of Global Tax

Name and Title of Authorized Representative

By: _____

Name and Title of Authorized Representative

COUNTY OF HUMBOLDT

By: Mark Lovelace

Mark Lovelace
Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS
APPROVED:

By: R. Haggan
Risk Management

ATTACHMENT 2



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-15

For the meeting of: August 28, 2015

Sept. 1

Date: July 17, 2015

To: Board of Supervisors

From: Humboldt County Treasurer-Tax Collector

Subject: Transient Occupancy Tax and Airbnb Inc. Compliance with County Ordinances

RECOMMENDATION(S): That the Board of Supervisors Support a Demand to Airbnb Requiring Compliance with Humboldt County Transient Occupancy Tax (Humboldt County Code Sections 712-1 through 712-15) and Humboldt County Board of Supervisor Resolution 12-38 Requiring Compliance With Humboldt County Tourism Business Improvement District Assessments.

SOURCE OF FUNDING: N/A

DISCUSSION:

Online hosting platforms now facilitate short term lodging in Humboldt County whereby operators rent out a room or rooms, a living space, or an entire house for less than thirty days through an online website hosted by a company. This is loosely termed the sharing economy. Airbnb Inc. is one of the companies that provides for advertising, reservations, and rentals for the operators. When operators in Humboldt County rent out their property through Airbnb, Inc., they do not currently pay the transient occupancy tax (TOT) as required by Humboldt County Ordinance. Airbnb does not currently require their operators in Humboldt County to collect the mandated 10% TOT (Humboldt County Code Section 712-3) or the mandated 2% Humboldt County Tourism Improvement District (HCTBID) assessments (Humboldt County Resolution 12-38) as is required from all other short term lodging facilities in the county.

The Airbnb platform makes it nearly impossible to determine the locations of the rentals it advertizes short of renting them out and then being told the location. Not knowing the location of these rentals facilitated by Airbnb makes collection efforts unreasonably difficult and too costly to collect. Therefore, because the Tax

Prepared by John Bartholomew *JB* CAO Approval *[Signature]*

REVIEW: Auditor *MSM* County Counsel *NAD* Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *LaValle* Seconded by Supervisor *Bass*
Ayes *Sandberg, LaValle, Fenou, Bohn, Bass*
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:
Board Order No. _____
Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.
Dated: *September 1, 2015*
By: *[Signature]*
Kathy Hayes, Clerk of the Board

Collector must treat all tax payers equally under the law, the Tax Collector requests cooperation from Airbnb to either collect and remit TOT and HCTBID assessments directly to the office of the Treasurer-Tax Collector (T-TC) along with verifiable data regarding said rentals; or to provide the T-TC department with all locations of rentals it facilitates in Humboldt County at least quarterly. Otherwise equal treatment of all short term lodging operators through-out Humboldt County cannot be achieved.

Senate Bill (SB) 593 (McGuire) is on-line hosting platform legislation that is currently on hold by the author due to the reluctance of Senate leadership to support the proposal. The current version of the bill would require on-line hosting platforms to collect and remit TOT and to provide specified data to local jurisdictions (address, rate, number of nights on a quarterly basis). It also allows locals to compel hosting platforms to remove homes from their site if home sharing is prohibited in that jurisdiction.

Airbnb has launched a full scale attack on SB 593 based primarily on privacy concerns (they do not want operator data shared with the municipalities) and their concern that imposing TOT on the home sharing operators will stifle the economy. The opposition has gained some support in the Senate. Airbnb's arguments against the bill negate the fundamental tax collecting requirement that all tax payers be treated equally. As it stands now, Airbnb type lodging operators are treated differently relative to all other short-term lodging operators that currently must, and do, pay TOT on a quarterly basis.

Since action at the state level is stalled, it is recommended that the county take action to collect the TOT and HCTBID assessments as all short-term lodging owners and operators in the county are legally required to pay.

On March 31, 2015, the T-TC sent the attached letter (Attachment 1) to Brian Chesky, the Chief Executive Officer (CEO) of Airbnb, requesting TOT compliance and has yet to receive a response. This lack of response indicates that Airbnb will not comply with existing county TOT ordinances absent additional action by the county.

For the last several months the T-TC and County Counsel's office have been in contact with the counties of Sonoma, San Luis Obispo, and Santa Cruz in coordinated discussions to determine the most productive course of action to secure Airbnb compliance. One county sent a strongly-worded letter to Airbnb indicating that the County Board of Supervisors would consider legal action against Airbnb should it not comply with the county's TOT ordinances. This resulted in Airbnb contacting that county and agreeing to collect and remit TOT; contract negotiations are still underway. Therefore the T-TC and the office of County Counsel recommend a similar course of action and request your Board authorize and direct Counsel to send the letter attached hereto as Attachment 2 to Airbnb. See a draft of that proposed letter in attachment 2.

FINANCIAL IMPACT: Positive

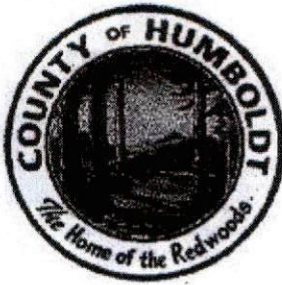
OTHER AGENCY INVOLVEMENT: None

ALTERNATIVES TO STAFF RECOMMENDATIONS: Not try to engage Airbnb directly but instead wait until SB 593 or other proposed legislation be approved, or not, at the state level.

ATTACHMENTS:

1. Letter to Airbnb dated March 31, 2015
2. Proposed follow-up letter to Airbnb

ATTACHMENT 1



COUNTY OF HUMBOLDT

JOHN BARTHOLOMEW
TREASURER-TAX COLLECTOR

825 FIFTH STREET ROOM 125
EUREKA, CALIFORNIA 95501

PHONE: 707-476-2450

FAX: 707-445-7608

TOLL FREE: 877-448-8829

EMAIL: taxinfo@co.humboldt.ca.us

Brian Chesky, CEO
Airbnb, Inc.
888 Brannan Street
San Francisco, CA 94107

March 31, 2015

Subject: Transient Occupancy Tax (TOT) Compliance

Dear Mr. Chesky,

Congratulations on the success of Airbnb and your business model. It fills an important niche satisfying the demand for short term lodging with a ready and willing supply. In this regard, we applaud you for stimulating growth in economies all over the world.

However, as a County Tax Collector, I must treat all tax payers equally under the law. This office cannot fulfill TOT responsibilities without collecting TOT from the lodgings you facilitate. This equal treatment mandate means we must strictly adhere to collecting TOT from all establishments which enable "the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days" (California Revenue and Taxation Code section 7280). So it follows that the lodging facilities you represent must also comply with these same TOT obligations.

The innovative model you use for linking the supply of lodging with the demand of eager tenants, or guests, easily circumvents the ability of our office to be aware of, find, contact, and ensure that those lodging owners, and/or operators, pay the required TOT to our jurisdiction. Therefore I request that Airbnb help facilitate this compliance.

I understand that TOT compliance is something you are dealing with in many jurisdictions and that you may be formulating a comprehensive approach to satisfy these requests. In absence of such a comprehensive solution, and given that Airbnb is already remitting TOT collections to certain jurisdictions, I request that we too be included in this select group.

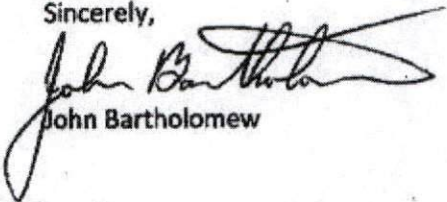
Humboldt County therefore asks that Airbnb begin collecting and submitting TOT to this office as soon as is reasonably possible.

Please reply with the date TOT will begin to be collected, as well as the frequency we should expect to receive the TOT remittance. We require monthly or quarterly remittance along with data for the lodging represented, including the name and address of the owners represented, so we can avoid duplicate TOT collection efforts. Once a start date is agreed upon, mailing and wiring instructions will be forwarded to the designated Airbnb department for payment reconciliation.

I welcome any comments, questions, or concerns you have regarding this request and look forward to a mutually satisfying agreement. Once an agreement for terms have been reached a contract will be drawn to secure a binding understanding between Airbnb and Humboldt County.

Using my email jbartholomew@co.humboldt.ca.us for correspondence is very welcome. Thank you for your consideration, effort, and reply in moving this forward.

Sincerely,



John Bartholomew

Cc:

David Owen, Airbnb Regional Head of Public Policy
Carolyn Ruth, County of Humboldt Assistant County Counsel
Natalie Duke, County of Humboldt Deputy County Counsel
Phillip Smith-Hanes, County of Humboldt Administrative Officer

ATTACHMENT 2



**COUNTY COUNSEL
COUNTY OF HUMBOLDT**

825 FIFTH STREET

EUREKA, CALIFORNIA 95501

PHONE: (707) 445-7236 FAX: (707) 445-6297

September 4, 2015

Brian Chesky, CEO
Airbnb, Inc.
888 Brannan Street
San Francisco, CA 94107

Re: Lack of compliance with Humboldt County's TOT Ordinance

Dear Mr. Chesky:

On March 31, 2015, the Humboldt County Treasurer-Tax Collector John Bartholomew wrote to you requesting that Airbnb pay transient occupancy tax (TOT) as mandated by law when facilitating short term rentals in the unincorporated area of Humboldt County. (See attached letter). On August 31st Mr. Bartholomew finally received a phone call from your organization.

Given Airbnb's delay in responding to the letter, Mr. Bartholomew had contacted County Counsel and brought the issue of Airbnb's non-compliance to the attention of the Humboldt County Board of Supervisors (the Board) at its September 1st meeting. The Board directed Counsel to notify Airbnb that if it fails to comply with the County's request by September 30, 2015, the Board will consider all potential enforcement options, including implementation of police powers to cap the number of days properties may be rented on a short-term basis and filing a lawsuit against Airbnb. Please continue your discussions with Mr. Bartholomew to resolve this matter in a timely fashion.

If you have any questions please contact me .

Sincerely,

Jeffrey S. Blanck
County Counsel