



COUNTY OF HUMBOLDT

For the meeting of: July 25, 2017

Date: July 11, 2017  
 To: Board of Supervisors  
 From: Amy S. Nilsen, County Administrative Officer *AN*  
 Subject: Operating Agreement with Humboldt Lodging Alliance

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the attached Agreement for Services between the County of Humboldt and the Humboldt Lodging Alliance for operation of the Humboldt County Tourism Business Improvement District (HCTBID); and
2. Authorize the Chair to sign two copies of the Agreement; and
3. Direct the Clerk of the Board to return one copy to the Humboldt Lodging Alliance.

SOURCE OF FUNDING: Assessments on Affected Businesses

DISCUSSION:

On May 23, 2017, your Board adopted Resolution No. 17-47 which established the HCTBID. The resolution provided (paragraph 13) that the Humboldt Lodging Alliance shall be the Owner's Association of the HCTBID as defined in Streets and Highways Code section 36612, and shall implement the proposed program.

Prepared by Karen Meynell, Economic Development Specialist CAO Approval *[Signature]*

REVIEW:	Auditor _____	County Counsel <i>UN</i>	Personnel _____	Risk Manager <i>KKG</i>	Other _____
---------	---------------	--------------------------	-----------------	-------------------------	-------------

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:  
 Board Order No. K-1  
 Meeting of: 5-23-2017

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
 Upon motion of Supervisor *Wilson* Seconded by Supervisor *Fennell*  
 Ayes *Wilson, Fennell, Sundberg*  
 Nays \_\_\_\_\_  
 Abstain \_\_\_\_\_  
 Absent *Bass, Bohn*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.  
 Dated: July 25, 2017  
 By: *[Signature]*  
**Kathy Hayes, Clerk of the Board**

The Board of the Humboldt Lodging Alliance has approved the attached Agreement for Services and their Chair has signed two copies. At this time, staff recommends that your Board approve the Agreement, effective immediately. This action will complete the formation of the HCTBID.

FINANCIAL IMPACT:

This Agreement will complete the establishment of the HCTBID, which has the effect of levying the assessment approved by the Board in Resolution 17-47. The Agreement provides for the County to recoup the costs for staff time spent in assisting with formation of the District.

Approval of staff's recommendations supports the Board's Strategic Framework to facilitate the establishment of local revenue sources to address local needs.

OTHER AGENCY INVOLVEMENT:

City of Arcata  
City of Eureka  
City of Ferndale  
City of Fortuna  
City of Rio Dell  
City of Trinidad  
Humboldt Lodging Alliance

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the attached Agreement and direct staff to renegotiate various provisions. This alternative is not recommended as it would delay creation of the HCTBID.

ATTACHMENTS:

Agreement with Humboldt Lodging Alliance (two copies)

**AGREEMENT FOR SERVICES  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
HUMBOLDT LODGING ALLIANCE, INC.  
FOR FISCAL YEARS 2017-2018 THROUGH 2027-2028**

This Agreement for Services (“Agreement”), dated as of 7/25/17 (“Effective Date”) is made and entered into by and between the County of Humboldt, a political subdivision of the State of California (“County”), and the Humboldt Lodging Alliance (“HLA”), Inc., a California non-profit mutual benefit corporation (“Contractor” or “HLA”), with reference to the following facts:

**Recitals**

WHEREAS, the Property and Business Improvement Law of 1994 (California Streets and Highways Code section 36600 *et seq.*) authorizes cities and counties to establish property and business improvement districts for the purposes of promoting tourism;

WHEREAS, on March 28, 2017, the Board of Supervisors adopted Resolution No. 17-28 declaring its intention to establish the Humboldt County Tourism Business Improvement District (“HCTBID”) and to levy and collect assessments on lodging and businesses within the boundaries of the district as proposed in the Management District Plan (“MDP”);

WHEREAS, following public hearing on the resolution and recording of any protests by owners of lodging businesses, the Board of Supervisors on May 23, 2017 passed Resolution 17-47 establishing the HCTBID;

WHEREAS, Contractor is designated in the Resolution 17-47 creating the HCTBID, as the agency to be given responsibility for carrying out services, activities and programs promoting tourism in Humboldt County (“Services”) funded by assessments from within the HCTBID and as governed by the December 14, 2016 MDP; and

WHEREAS, Contractor was formed in accordance with the requirements of the Resolution and is willing to provide the Services on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **Agreement**

**1. Administration of Agreement.** The County Administrative Officer or his/her designee is hereby designated to administer this agreement on behalf of County necessary for implementation of the provisions of this agreement.

**2. Contractor's Services.** Contractor agrees to perform the following services on behalf of County:

(1) Manage HCTBID funds in accordance with the December 14, 2016 MDP, attached hereto as Attachment 1 and incorporated by reference.

(2) Prepare and submit an annual report on activities pursuant to Streets and Highways Code section 36650.

**3. Cooperation with County.** Contractor shall cooperate with County and County staff in the performance of all work hereunder.

**4. Performance Standard.** Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Section 7; or (d) pursue any and all other remedies at law or in equity.

**5. Payments.**

5.1 Sources. During the term of this Agreement, Contractor shall receive the following payments from County: All revenues received by County from assessments made pursuant to the Resolution ("Assessments"), less any costs associated with the creation of the HCTBID and less reimbursements and fees authorized by the MDP, which specifically provides that the County and each city shall be paid a fee equal to 1% of the amount of the assessment collected in their respective jurisdictions to cover their costs of collection and administration, and

5.2 Uses. Contractor shall use funds received pursuant to Section 5.1 only for purposes set forth in the MDP and authorized by, and subject to the terms and conditions of, the Resolution and this Agreement.

**6. Term of Agreement.** The term of this Agreement shall be from the Effective Date to June 30, 2028, unless terminated earlier in accordance with the provisions of Section 7 below. Thereafter, this Agreement will be automatically renewed each year for successive one-year terms unless one party gives the other party written notice of non-renewal at least 30 days before the expiration of the then current term.

**7. Termination.**

7.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Contractor.

7.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination, if Contractor does not cure the reason given within 10 days of receiving the written notice.

7.3 Procedures Relating to Termination. If County terminates this Agreement pursuant to Section 7.1 or 7.2, or if the HLA is disestablished, or if the term of this Agreement expires, the following procedures shall apply. Contractor's obligations under this Section 7.3 are in addition to those contained in Section 10.8 of this Agreement.

7.3.1 Transfer of or Payment for Property. County and Contractor agree that all property (both tangible property and intangible property such as intellectual property) either (a) acquired by Contractor directly from County, or (b) acquired using funds provided by County pursuant to Section 5.1 of this Agreement, or (c) acquired by Contractor using funds provided by County prior to the term of this Agreement (the "Property") shall be used exclusively for the purposes set forth in the Resolution and Section 5.2 of this Agreement. No later than twenty (20) days before termination, expiration, or disestablishment, Contractor shall deliver to County a complete list of all Property. For each item of Property, Contractor shall, as designated by County at County's option, either (1) transfer title to and deliver the Property to County (or, if directed by County, to a successor contractor), or (2) pay to County the then-current fair market value of the Property. Contractor shall fully cooperate with County following termination, expiration, or disestablishment to ensure that all Property necessary to the continued operation of the tourism marketing program is transferred and delivered in a prompt and timely manner in order to minimize disruption to the tourism marketing program.



7.3.2 Assignment of Agreements. Contractor shall use its best efforts to ensure that all contracts, leases, and other agreements entered into between Contractor and third parties contain language allowing the contracts, leases, and other agreements to be assigned to the County or a successor contractor. No later than twenty (20) days before termination, expiration, or disestablishment, Contractor shall provide County with a list of all contracts, leases, and other agreements. Contractor shall assign to County or, if directed by County, to a successor contractor, any contract, lease, or other agreement designated by County.

7.3.3 Accounting. Within thirty (30) days of termination, expiration, or disestablishment, Contractor shall provide County with a complete accounting of all money and other financial assets (including, but not limited to, money market funds, notes, accounts payable, securities, claims, etc.) held by or for Contractor that (a) were acquired by Contractor directly from County, or (b) were acquired using funds provided by County pursuant to Section 5.1 of this Agreement (including assets constituting or acquired using the proceeds from the sale or disposition of Property or the proceeds from any agreement funded by Contractor using funds received from the County) (the "Financial Assets"), and shall transfer such Financial Assets to County.

7.3.4 Cooperation; Payment of Transition Costs. In the event of termination, expiration, or disestablishment, Contractor shall fully cooperate with County in order to transfer the operation of the tourism marketing program to County or to a successor contractor in an orderly and expeditious manner. County shall pay the actual, reasonable costs and expenses incurred by Contractor in providing such cooperation following submission by Contractor of sufficient documentation establishing such costs and expenses.

**8. Indemnification.** Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims arising from the formation and operation of the HCTBID. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by County to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of County. If there is a possible obligation to indemnify, Contractor's duty to defend exists regardless of whether it is

ultimately determined that there is not a duty to indemnify. County shall have the right to select its own legal counsel at the expense of Contractor, subject to Contractor's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. Contractor's obligations under this Section 8 shall not be paid or discharged using funds paid to Contractor by County under Section 5.1 or using funds derived from any assets or property acquired by Contractor using funds paid to Contractor by County under Section 5.1, except proceeds from any policy of insurance maintained by Contractor under Section 9. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by Contractor.

**9. Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, contractors, and other agents to maintain, insurance as described below:

**9.1 Workers' Compensation Insurance.** Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days' prior written notice to the County of Humboldt, Risk Manager.

**9.2 General Liability Insurance.** Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

a. The County of Humboldt, its agents, officers, officials, employees and volunteers, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

c. The insurance provided herein is primary coverage to the County of Humboldt with respect to any insurance or self-insurance programs maintained by the County.



d. This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Humboldt, Risk Manager.

9.3 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Humboldt, Risk Manager.

9.4 Documentation. The following documentation shall be submitted to the County of Humboldt, Risk Manager:

a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Certificates of Insurance evidencing the above-required coverages, limits, and endorsements on file with the County for the duration of this Agreement and assumes responsibility to automatically provide renewals without prior notification from County.

b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

c. Upon County's written request, certified copies of the insurance policies. Said policy copies shall be submitted within thirty (30) days of County's request.

d. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

#### 9.5 Policy Obligations.

a. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

b. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.

c. County is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and Contractor shall be required to purchase additional coverage to meet the above-referenced aggregate limits.



9.6 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. County, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

9.7 Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provision described herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

CONTRACTOR: Humboldt Lodging Alliance, Inc.  
c/o Eureka - Humboldt Visitors Bureau  
322 First Street  
Eureka, CA 95501

## **10. Representations of Contractor.**

10.1 Standard of Care. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

10.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Section 7, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10.3 Taxes. Contractor agrees to file federal and state tax returns and pay any 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 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. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.

#### 10.4 Records Retention and Inspection.

a. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least four (4) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.

b. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONTRACTOR hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

c. Audit Costs. In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10.5 Conflict of Interest. Contractor may not employ or subcontract with any person where such employment or subcontract would constitute a violation of California Government Code sections 1090 *et seq.*

#### 10.6 Nondiscrimination.

a. Professional Services and Employment. In connection with the execution of this Agreement, Contractor, and its subcontractors, shall not unlawfully

discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

b. Compliance with Anti-Discrimination Laws. Contractor further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

10.7 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all work product, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all work product. Contractor shall have an exclusive right to use the work product during the term of this Agreement, but shall not permit another to use the work product without first obtaining written permission of County.

10.8 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, contractors, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to County all such documents, which have not already been provided to County, in such form or format as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation.

Contractor shall have an exclusive right to use the documents during the term of this Agreement and may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

10.9 Monitoring. Contractor agrees that County has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor Contractor's records, programs or procedures, at any time, as well as the overall operation of Contractor's programs, in order to ensure compliance with the terms and conditions of this Agreement. Contractor will cooperate with a corrective action plan, if deficiencies in Contractor's records, programs or procedures are identified by County. However, County is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by Contractor pursuant to the terms and conditions of this Agreement.

10.11 Drug-Free Workplace Certification. By executing this Agreement, Contractor certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

a. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

b. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:

1. The dangers of drug abuse in the workplace;
2. Contractor's policy of maintaining a drug-free workplace;
3. Any available counseling, rehabilitation and employee assistance programs; and
4. Penalties that may be imposed upon employees for drug abuse violations.

c. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:

1. Receive a copy of Contractor's Drug-Free Policy Statement; and



2. Agree to abide by the terms of Contractor's Drug-Free Policy as a condition of employment.

d. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and Contractor may be ineligible for award of future contracts if County determines that the foregoing certification is false or if Contractor violates the certification by failing to carry out the above-referenced requirements.

**11. Demand for Assurance.** Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Section 11 limits County's right to terminate this Agreement pursuant to Section 7.

**12. Assignment and Delegation.** Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

**13. Subcontracting.** The parties recognize that the Contractor shall enter into subcontracts for the administrative, professional and related services necessary for the implementation of the MDP. A subcontract will not relieve the Contractor from any liability or obligation under this Agreement and, as between County and Contractor, Contractor shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Contractor. Contractor shall ensure that its subcontractors comply with all of the terms of this Agreement insofar as they apply to the subcontracted portion of the MDP. All references herein to duties and obligations of Contractor shall be deemed to pertain also to all subcontractors to the extent applicable. Each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the MDP.

**14. Method and Place of Giving Notice, Submitting Bills and Making Payments.** All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY: County Administrative Office  
825 Fifth Street, Room 112  
Eureka, CA 95501-1153

TO: CONTRACTOR: Humboldt Lodging Alliance, Inc.  
c/o Eureka - Humboldt Visitors Bureau  
322 First Street  
Eureka, CA 95501

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile, the notice bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail, (2) the sender has a written confirmation of the facsimile transmission, and (3) the facsimile is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

**15. Miscellaneous Provisions.**

15.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

15.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

15.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

15.4 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.

15.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the laws of California. Any action to enforce the terms of this Agreement or for the breach thereof shall be litigated in the State of California and venue shall lie in the County of Humboldt.

15.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

15.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

15.8 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

15.9 Nuclear Free Humboldt County Ordinance Compliance. Contractor certifies by its signature below that Contractor is not a Nuclear Weapons Contractor, in that Contractor 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. Contractor 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 Contractor becomes a nuclear weapons contractor.

15.10 Open Meetings; Compliance with Ralph M. Brown Act. Actions of the Contractor shall be taken openly and deliberations shall be conducted openly in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), as made applicable to Contractor pursuant to Section 36614.5 of the Streets and Highways Code and this Agreement.

15.11 Public Access to District Related Records; Compliance with the California Public Records Act. Contractor shall comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement.

15.12 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.

15.13 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.

[Signatures on Following Page]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

HUMBOLDT LODGING ALLIANCE, INC.

By: Chris Ambrosini  
Board Chairperson

CERTIFICATES OF INSURANCE ON  
FILE WITH AND APPROVED AS TO  
SUBSTANCE BY DEPARTMENT:

DATED: 07/13/2017

By: Kayla  
Risk Manager

DATED: 7/25/2017

COUNTY OF HUMBOLDT

By: Ryan Sundberg  
Vice-Chair, Board of Supervisors  
Ryan Sundberg

DATED: 7/25/2017

ATTEST:

Broke Eberhardt  
Clerk of the  
Board of Supervisors  
Broke Eberhardt