

**AGREEMENT FOR ADVERTISING AND
PROMOTING HUMBOLDT COUNTY**

THIS AGREEMENT is entered into 5th day of July 2016, by and between the **County of Humboldt**, a political subdivision of the State of California, hereinafter referred to as COUNTY, and the **Humboldt County Convention & Visitors Bureau**, a nonprofit corporation, hereinafter referred to as CONTRACTOR, collectively known as "the Parties".

WITNESSETH:

WHEREAS, COUNTY benefits directly and indirectly from making known to the national and international public the resources and advantages of Humboldt County; and

WHEREAS, COUNTY is authorized to enter into agreements to advertise and promote its resources and advantages pursuant to Government Code Section 26100; and

WHEREAS, CONTRACTOR has been organized to make known the various resources and advantages of Humboldt County through programs of advertising and promotion; and

WHEREAS, COUNTY desires CONTRACTOR to coordinate the advertising and promotion of its resources and advantages in exchange for the compensation described herein,

WHEREAS, the CONTRACTOR pledged to support airline recruitment for the Arcata-Eureka Airport, and additional air service is believed to increase local tourism revenues,

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, it is hereby understood and agreed by and between the parties hereto as follows:

1. Term of Agreement. This agreement shall commence July 1, 2016, and continue in force and effect through June 30, 2019, unless terminated earlier as provided herein.

2. Administration of Agreement. The County Administrative Officer or his/her designee is hereby designated to administer this agreement on behalf of COUNTY and is hereby authorized to make any determination on behalf of COUNTY necessary for implementation of the provisions of this agreement.

3. Services - General. CONTRACTOR agrees to perform the following services on behalf of COUNTY:

- A. Advertise and make known the resources of Humboldt County.
- B. Develop the local economy through the marketing, promotion, advertising, and servicing of Humboldt County.

4. Compensation. For and in consideration of the services to be performed under this agreement, COUNTY agrees to allocate to CONTRACTOR, subject to annual approval of COUNTY's budget by the Board of Supervisors, a sum not to exceed sixteen percent (16%) of the Transient Occupancy Tax received by COUNTY in the fiscal year ended twelve months prior to the beginning of the fiscal year in which payment is made by the COUNTY, i.e. payments to CONTRACTOR during fiscal year 2013-14 shall be based on revenue received during fiscal year 2011-12. Payments to CONTRACTOR will be made in two equal payments each year, upon receipt of an invoice from CONTRACTOR, and shall be due and payable the first business day during the months of July and January.

COUNTY will reimburse CONTRACTOR for a portion of actual Minimum Revenue Guarantee (MRG) expenditures paid to an airline under a MRG agreement. Reimbursement will be based on the annual increase in Transient Occupancy Tax revenue above the base year (base year is the last full year prior to additional destinations being added). Any increased Transient Occupancy Tax received will be allocated to CONTRACTOR at a rate of 50 percent, up to a maximum of \$62,500 per year, and not to exceed \$125,000 over the entire two year period of the MRG.

5. Reduction in Compensation. CONTRACTOR recognizes that the services provided under this Agreement represent a small fraction of the variety of services for which COUNTY is responsible, and that the Transient Occupancy Tax is a source of general revenue which may be allocated at the discretion of COUNTY's Board of Supervisors. Therefore, CONTRACTOR agrees that the compensation payable under Section 4, above, is subject to reduction by COUNTY in the event of financial conditions that result in reductions generally applicable to other General Fund budgets. COUNTY agrees to notify CONTRACTOR, in writing, not later than the 1st day of March of any reduction to the compensation due under Section 4 for the succeeding fiscal year. In the event that the COUNTY fails to notify CONTRACTOR by March 1 of a reduction in compensation in accordance with this paragraph, CONTRACTOR's compensation for the following year shall be calculated in accordance with Section 4.

6. County Gateways. CONTRACTOR recognizes that part of its responsibility, in order to provide the services outline in Section 3, above, is to provide support for "gateways" to Humboldt County that disseminate information which markets, promotes and advertises Humboldt County. Therefore, CONTRACTOR agrees to support the work of the following gateways: Garberville Information Booth, Orick Information Booth, Willow Creek Information Booth, and Arcata Visitors Center. To clarify this support, CONTRACTOR shall enter into a separate agreement with the organizations operating each gateway, and shall provide a copy of each of those agreements to COUNTY not later than June 30, 2017. Each of these agreements shall include the provisions specified in Section 15 of this agreement as well as annual reporting of work plans from each of the gateways to CONTRACTOR.

7. Compensation to Gateways Organizations. As part of its commitment under Section 6, above, CONTRACTOR agrees to pass forty percent (40%) of the funding received from COUNTY pursuant to this Agreement to the gateways, as follows: 23.84% to Garberville Chamber of Commerce in support of the Garberville Information Booth, 6.83% to the Orick Chamber of Commerce in support of the Orick Information Booth, 6.83% to the Willow Creek Chamber of Commerce in support of the Willow Creek Information Booth, and 2.5% to the Arcata Chamber

of Commerce in support of the Arcata Visitors Center. Such "pass-throughs" shall be made within 30 days of receipt of funds from COUNTY, and shall be documented by copies of checks or wire transfer instructions which shall be made available to COUNTY upon request.

8. Annual Report. CONTRACTOR shall compile an annual report which includes a work plan and budget for the upcoming year as well as the manner in which CONTRACTOR has performed the services required by this Agreement during the preceding year. Such report shall identify specific activities carried out, expenditures, hours of operation, and other relevant information, and shall be presented by CONTRACTOR to the Board of Supervisors in open session in March of each year. In advance of this presentation, CONTRACTOR shall submit copies of the report to the Clerk of the Board of Supervisors and the County Administrative Officer. CONTRACTOR shall also provide COUNTY on a timely basis as specified by COUNTY any written reports and responses which COUNTY shall reasonably request.

9. Meetings. CONTRACTOR's meetings shall be open to the public. Minutes of said meetings shall be maintained and made available upon request.

10. Title to Equipment. Any equipment acquired with funds allocated under this Agreement shall be deemed the property of COUNTY. Upon termination of this Agreement, CONTRACTOR may continue to use said equipment for so long as the program for which the funds were provided continues to be conducted by CONTRACTOR. If the program ceases to be conducted by CONTRACTOR, said property shall be returned to COUNTY.

11. Copyrights, Patents. If this Agreement results in a video or other copyrightable material, the author is free to copyright the work, but COUNTY reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyright material and all materials, which can be copyrighted. A discovery or invention arising out of or developed in the course of work aided by this Agreement shall promptly and fully be reported to COUNTY for determination as to whether patent protection of such invention or discovery shall be sought and how the rights of the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

12. Accounting Records. Accounting records of CONTRACTOR shall be kept in a manner approved by the County Auditor-Controller and shall be open to inspection by the County Auditor-Controller and/or the County Administrative Officer at any time during business hours for the term of this Agreement and one year thereafter. COUNTY shall have the right to monitor all work performed under this Agreement. In addition, CONTRACTOR will hire an independent auditor to perform a financial review of all activities, accounts and records associated with the use of funds received pursuant to this Agreement. Such review shall be conducted at least once during the term of this Agreement. CONTRACTOR will notify COUNTY in writing within thirty (30) days of any potential exceptions discovered during such review where such findings indicate that Agreement requirements are not being met. Upon discovery, CONTRACTOR promises to take appropriate corrective action immediately.

13. Insurance. Without limiting CONTRACTOR'S indemnification provided herein,

CONTRACTOR shall, and shall require any of its subcontractors, to take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers with a current A.M. Best rating of no less than A:VII or its equivalent, against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, employees or subcontractors:

A. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence for anyone incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

B. Automobile and liability coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit coverage including, but not limited to, owned, non-owned, leased and hired vehicles and trucks. Said coverage shall be at least as broad as Insurance Services Office Form Code 1 (any auto).

C. Workers Compensation Insurance compensation coverage, if required by California Law, and in accordance with the statutory limits set forth therein. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees.

D. Employers Liability coverage in a minimum amount of one million dollars (\$1,000,000) per accident for bodily injury and disease.

E. Copies of insurance certificates and any notices required hereunder shall be delivered to:

County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

F. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

(1) The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

a. Includes contractual liability.

b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards."

- c. Is primary insurance as regards to County of Humboldt
- d. Does not contain a pro-rata, excess only, and/or escape clause.
- e. Contains a cross liability, severability of interest or separation of insureds clause.

(2) The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions herein. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.

(3) 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 insurer's liability.

(4) For claims related to this project, CONTRACTOR's insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to CONTRACTOR's insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.

(6) CONTRACTOR shall furnish COUNTY with certificates and original endorsements affecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the County Risk Manager or County Counsel. Any deductible or self insured retention over \$100,000 shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Contract.

(7) 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 aggregate limits set forth above.

14. Hold Harmless. CONTRACTOR agrees to indemnify, defend and hold harmless COUNTY, its Board of Supervisors, officers, agents, employees and volunteers, from any and all claims and

losses, including attorney's fees, accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by CONTRACTOR in the performance of this Agreement.

15. Subcontracting. No portion of the work required hereunder shall be subcontracted without the prior written approval of COUNTY. Should CONTRACTOR subcontract any portion of the work to be performed under this Agreement, said subcontractors shall be required to enter into a written contract with CONTRACTOR:

A. Acknowledging that no employee/employer relationship exists between CONTRACTOR and subcontractor and that no Workers' Compensation, unemployment benefit or other personnel benefits are required by or available to subcontractor through CONTRACTOR or COUNTY; and

B. Agreeing to hold harmless and to indemnify, defend and save harmless CONTRACTOR and COUNTY, its Officers, agents and employees, from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by subcontractor in the performance of this Agreement.

16. Nuclear Free Humboldt County Ordinance Compliance. CONTRACTOR certifies by its signature below that CONTRACTOR is not a nuclear weapons contractor, in that it 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.

17. Relationship of Parties. CONTRACTOR is an independent contractor with respect to all matters set forth in this Agreement. This Agreement is not intended, and shall not be construed to create the relationship of agent, servant, employee, joint venture or association between CONTRACTOR and COUNTY.

18. Termination. COUNTY may terminate this Agreement on ninety (90) days written notice to CONTRACTOR. Notice of termination shall be deemed effected two (2) days after the mailing of said notice or, if notice is given by personal delivery, upon delivery of said notice to CONTRACTOR. In the event of termination, CONTRACTOR shall return to COUNTY any unexpended funds.

19. Notice. Notices required by this Agreement shall be addressed as follows:

For COUNTY:

County Administrative Office
825 Fifth Street, Room 111
Eureka, CA 95501-1153

For CONTRACTOR:

Humboldt County Convention & Visitors Bureau
1034 Second Street
Eureka, CA 95501

20. Ratification of Prior Actions. To the extent that the parties have already carried out any of the provisions of this Agreement, such actions are hereby ratified by the parties hereto.

21. Compliance with Laws. CONTRACTOR agrees to comply with all local, State and Federal laws and regulations, including but not limited to the Americans with Disabilities Act. CONTRACTOR further agrees to comply with any applicable local, State, or Federal licensing standards; any applicable accrediting standards; or any other applicable standards of criteria established locally, or by the State or Federal governments.

22. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall lie in Humboldt County, California.

23. Complete Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. This Agreement supersedes all previous Agreements between the parties.

24. Amendments. Any alternations, variations, modifications or waivers of provisions to this Agreement shall be valid only when reduced to writing duly signed by both parties and attached to the original of this Agreement.

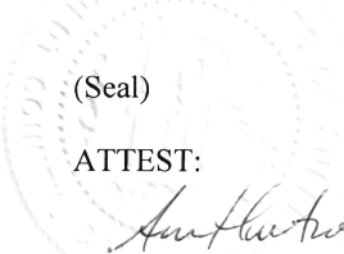
25. Assignability. CONTRACTOR shall not assign any interest in this Agreement without the prior consent of COUNTY, and any attempted assignment without such consent shall be void.

26. Equal Employment Opportunity Practices Provision. CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964 and no person shall, on the grounds of race, religion or religious creed, color, age (over 40), 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), military service, or any other classification protected by federal, state, or local laws and ordinances be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers the day and year first above written.

(Seal)

ATTEST:


Kathy Hayes, Deputy
Kathy Hayes
Clerk of the Board of the Supervisors of
the County Of Humboldt, State of
California

Approved as to Insurance Provisions
and Certificates Filed

R. Haggandi

Risk Manager

COUNTY OF HUMBOLDT

Mark Lanford

Chair of the Board of Supervisors
County of Humboldt, State of California

CONTRACTOR

By *Anthony Smithers*

Title Executive Director

By _____

Title _____