

## **AGREEMENT FOR SERVICES**

This Agreement for Services (“Agreement”) is made as of the date next to the last signature hereto (the “Effective Date”) by and between the Sonoma County Tourism Bureau, Inc., a California non-profit corporation (hereinafter “SCT”), and [REDACTED] (hereinafter “Contractor”) with reference to the following facts.

### **RECITALS**

WHEREAS, Contractor represents that [he/she/it] is a duly qualified full service [REDACTED] firm; and

WHEREAS, in judgment of SCT’s Board of Directors, it is necessary and desirable to employ the services of Contractor to work with SCT;

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

### **AGREEMENT**

1. **Scope of Services.**

1.1. **Contractor’s Specified Services.** Contractor shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter “Scope of Work”), within the times or by the dates provided for in Exhibit A and Article 7.

1.2. **Cooperation with SCT.** Contractor shall work closely with SCT and SCT staff in the performance of all work hereunder.

1.3. **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 SCT determines that any of Contractor’s work is not in accordance with such level of competency and standard of care, SCT shall have the right to do any or all of the following: (a) require Contractor to meet with SCT 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; or (c) terminate this Agreement pursuant to the provision of Article 4.

1.4. **Assigned Personnel.** Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time SCT, for no good cause shown, desires the removal of any person or persons assigned by Contractor to perform any work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from SCT.

1.5. Key Personnel. In performing services under this Agreement, Contractor shall assign the following personnel to supervise and perform the services hereunder, who are deemed by SCT to be key personnel whose services were a material inducement to SCT to enter into this Agreement, and without whose services SCT would not have entered into this Agreement: [REDACTED]. Except for good cause shown, Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SCT.

2. Payment. For all services and incidental costs required hereunder, Contractor shall be compensated as set forth in the Scope of Work. Contractor shall invoice SCT for all services provided hereunder as set forth in the Scope of Work, and payment shall be made net 30 days after the invoice date.

3. Term of Agreement. The initial term of this Agreement shall be for one year following the Effective Date unless terminated earlier in accordance with the provisions of Article 4 below. The term shall be automatically extended for successive periods of one year following the initial term unless either party notifies the other in writing of its election to have the Agreement expire at least thirty days in advance of the end of the then-current term.

4. Termination.

4.1. Termination Without Cause. At any time and without cause, SCT shall have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days written notice to Contractor. In the event of such termination, SCT shall pay Contractor for services and associated costs satisfactorily rendered to the date of termination and Contractor shall cooperate with SCT to affect the transfer of all work-in-progress to SCT or to a new Contractor designated by SCT.

4.2. Termination for Cause. 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, SCT may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination. In such event, (i) SCT shall pay Contractor for services and associated costs satisfactorily rendered to the date of termination; provided, however, that SCT shall deduct from such amount the amount of damage, if any, sustained by SCT by virtue of the breach of the Agreement by Contractor, and (ii) Contractor shall cooperate with SCT to effect the transfer of all work-in-progress to SCT or to a new Contractor designated by SCT.

5. Indemnification and Insurance.

5.1 Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to SCT, and to defend, indemnify, hold harmless, reimburse and release SCT, 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 SCT 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 SCT, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of SCT. If there is a possible obligation of indemnify, Contractor's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. SCT 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.

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

[Insert insurance requirements, if any. Otherwise insert "Not applicable"]

6. Prosecution of Work.

6.1 Commencement of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

6.2 Extra or Changed Work. Only SCT's President/CEO may authorize extra or changed work or waive Agreement requirements. Failure of Contractor to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SCT's President/CEO.

7. Representations and Warranties of Contractor.

7.1 Standard of Care. SCT has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all its work will be performed 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 SCT shall not operate as a waiver or release.

7.2 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 SCT and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits SCT provides its employees. In the event SCT exercises its right to terminate this Agreement pursuant to Paragraph 4, above, Contractor expressly agrees that it shall have no recourse or right to appeal under rules, regulations, ordinances, or law applicable to employees.

7.3. Taxes. Except as elsewhere herein provided, Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold SCT 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 SCT is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish SCT with proof of payment of taxes on these earnings.

7.4. Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SCT for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

7.5. Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed. In addition, if requested to do so by SCT, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SCT disclosing Contractor's or such other person's financial interest.

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

8. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectations 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 rights to demand adequate assurance of future performance.

9. Assignment and Declaration.

9.1. No Assignment or Delegation. Except as provided in Section 9.2, 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.

9.2 Assignment and Delegation to Successor to SCT. Contractor understands that the Sonoma County Board of Supervisors formed a Business Improvement Area (BIA) for the purpose of providing an additional source of funding for tourism marketing efforts within Sonoma County, and contracted with SCT to provide those marketing services. The contract between SCT and the County may be terminated by the County at any time, with an obligation for SCT to assign the rights and responsibilities created by this Agreement to the County or its designee. Contractor agrees that, notwithstanding Section 9.1, if SCT's contract with the County is terminated, then the County may assume, or assign to a new non-profit corporation, all of SCT's right, title, and interest in and to this Agreement, and may delegate to itself or its designee all of the duties, obligations, and responsibilities imposed upon SCT under this Agreement. Upon acceptance of such assignment and delegation, SCT shall have no further liability under this Agreement. Contractor shall not terminate this Agreement pursuant to Section 4.1 because of the assignment and delegation by SCT pursuant to this Section 9.2.

10. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

TO: Sonoma County Tourism SCT  
400 Aviation Blvd., Ste. 500  
Santa Rosa, CA 95403

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given notice pursuant to this paragraph.

11. Intellectual Property Rights.

11.1 Ownership of Work Product. All reports, drawings, graphics, plans, studies, and other data or documents (including, but not limited to, HTML pages and coding, and related software), in whatever form or format, assembled or prepared by Contractor or

Contractor's employees, subcontractors, consultants, and other agents in connection with this Agreement shall be the property of SCT upon full payment of all sums due hereunder by SCT, subject to any third party rights retained therein. It is the intention of the parties that Contractor's work hereunder shall constitute "work for hire," to the maximum extent provided for under federal copyright law. To the extent that Contractor's work hereunder does not qualify as work for hire, Contractor hereby transfers all rights, title and interest in said work to SCT. The foregoing shall not apply with respect to materials owned by Contractor prior to its execution of this Agreement, or pursuant to the express terms of the attached Scope of Work, or with respect to ideas rejected by SCT, which shall remain Contractor's property. Contractor shall deliver such materials to SCT upon either the expiration or termination of this Agreement and full payment of all amounts due hereunder in such form or format as the parties reasonably agree. Such materials shall be and will remain the property of SCT without restriction or limitation. The parties agree that all materials prepared hereunder are intended for use in the United States only, and that SCT assumes all risk connected with the use of such materials outside the United States.

11.2 Assignment of Rights. Contractor assigns to SCT 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 SCT 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.

12. Miscellaneous Provisions.

12.1 No Waiver of Breach. The waiver by SCT 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 the Agreement.

12.2 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 in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and SCT 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 SCT acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement. In the event of a conflict between any provision in the body of this Agreement and any provision in any exhibit to this Agreement, the provision in the body of the Agreement shall be controlling.

12.3. Resolution of Disputes. The parties agree that disputes, which cannot be resolved by the parties alone, will be resolved by the following process:

A. Mediation. The parties agree to mediate any dispute or claim between them arising out of this Agreement or any resulting transaction before resorting to arbitration or court action. The mediation fee, if any, shall be divided equally among the parties involved. In advance of the mediation, the parties shall voluntarily exchange all documents requested by the other party that relate to the dispute. Issues concerning discovery shall be submitted to the mediator prior to mediation; the mediator's decision shall not be binding upon the parties to the dispute. Statements made during any mediation proceeding shall not be admissible in a subsequent arbitration or court proceeding, and shall be privileged to the full extent permitted under California law. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempt to resolve the matter through mediation, then in the discretion of the arbitrator(s) or judge, the other party may apply to such arbitrator or judge for an order staying the arbitration or court action pending mediation.

B. Arbitration. If the parties cannot resolve the dispute with the assistance of a mediator, the parties shall submit the dispute to binding arbitration. So that all claims, disputes, or controversies that may arise can be resolved by arbitration, any dispute or claim in law or equity between the parties arising out of this contract or the breach thereof, or any resulting transaction which is not resolved through mediation, shall be decided by neutral, binding arbitration and not by court action, except as provided by law for judicial review of arbitration proceedings. Arbitration shall take place in Santa Rosa, California. The arbitration shall be conducted in accordance with the rules of either the American Arbitration association ("AAA") or Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The selection between AAA and JAMS rules shall be made by the claimant first filing for the arbitration, but the parties to the arbitration may agree in writing to use different rules or arbitrators.

12.4 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.

12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

12.6 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.

12.7 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.

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

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

DATED: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
\_\_\_\_\_

DATED: \_\_\_\_\_

SONOMA COUNTY TOURISM  
BUREAU, INC.

By: \_\_\_\_\_  
\_\_\_\_\_,  
President/CEO



**Exhibit "A"**  
**Scope of Work**