



MARIPOSA COUNTY

Treasurer-Tax Collector-County Clerk ·



RESOLUTION - ACTION REQUESTED 2019-130

MEETING: March 12, 2019
TO: The Board of Supervisors
FROM: Keith Williams, Treasurer/Tax Collector
RE: Airbnb Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Airbnb to Collect and Remit Transient Occupancy Taxes and the Tourism Business Improvement District Fees on Behalf of their Users; and Authorize the Board of Supervisors Chair to sign the Agreement.

Airbnb is an online platform that allows owners and operators to advertise their vacation rentals and process the payments from any bookings made. This agreement will allow Transient Occupancy Taxes (TOT) and the Tourism Business Improvement District Fees (TBID) to be charged to the guests and remitted directly to the County by Airbnb.

Approval of this agreement will allow the taxes and fees to be charged separate from the nightly rate and will benefit owners and operators who use the platform.

There are currently over 480 rental listings on the Airbnb platform in Mariposa County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has previously supported TOT collection efforts.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the agreement and continue collecting the taxes from the owners and operators.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Airbnb - Mariposa County Final VCA (2.28.19) (clean) (PDF)
2019 Airbnb TOT-BID Tax Return Template (PDF)

Resolution - Action Requested 2019-130

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Merlin Jones, District II Supervisor

SECONDER: Kevin Cann, District IV Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

**VOLUNTARY COLLECTION AGREEMENT
FOR
COUNTY OF MARIPOSA, CALIFORNIA
TRANSIENT OCCUPANCY TAX AND
APPLICABLE ASSESSMENTS**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated March 12, 2019 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”), and **COUNTY OF MARIPOSA, CALIFORNIA** (the “**Taxing Jurisdiction**”). 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 (the “**Platform**”) through which third parties offering accommodations and/or activities (“**Hosts**”) and third parties booking such accommodations and/or activities (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations and/or activities to which Airbnb is not a party (“**Booking Transactions**”); and

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable transient occupancy Taxes and sales taxes (“**Taxes**”) imposed under applicable County of Mariposa law (the applicable “**Code**”), and applicable Tourism Business Improvement District (“**TBID**”) assessments levied pursuant to the Mariposa County Tourism Management District Plan and Mariposa County Resolution No. 08-129, as renewed (collectively, the “**TBID Plan**”) and collected by the County, on behalf of certain Hosts for Booking Transactions completed by such Hosts and Guests on the Platform for accommodations transactions located in the County of Mariposa (the “**Taxable Booking Transactions**”).

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

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform by Hosts other than those defined in Paragraphs (E) and (E-1) below, Airbnb agrees contractually to assume the duties of a Taxes collector as described in the Code (“**Taxes Collector**”) and of a TBID collector pursuant to the TBID Plan (“**TBID**

my / MSM

Collector”) solely for the collection and remittance of Taxes and TBID, respectively, on behalf of certain Hosts.

(B) Starting on May, 1 2019 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting Taxes and TBID on behalf of certain Hosts, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect Taxes and/or TBID for any period or for any transaction prior to the Effective Date or after the termination date of this Agreement.

(C) Except as set forth in Paragraph (E) below, Airbnb agrees to register as a Taxes Collector on behalf of Hosts for the sole purpose of reporting, collection and remittance of Taxes under this Agreement, and will be the registered Collector on behalf of any affiliate or subsidiary collecting Taxes. Airbnb agrees to register as a TBID Collector for the reporting, collection and remittance of TBID under this Agreement and will be the registered TBID Collector on behalf of any affiliate or subsidiary collecting TBID. The assumption of such duties described in Paragraph (A) above and this Paragraph (C) shall not trigger any other registration requirements to which Airbnb is not otherwise subject.

REMITTANCE OF TAXES AND TBID

(D) Airbnb agrees to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including an aggregate of gross receipts, exemptions and adjustments, and taxable receipts of all Taxes and TBID that are subject to the provisions of this Agreement. Airbnb shall remit all Taxes and TBID collected from Guests in accordance with this Agreement and Airbnb’s Terms of Service (www.airbnb.com) (the “**TOS**”) in the time and manner described in the Code or as otherwise agreed to in writing.

REGISTERED HOSTS

(E) Airbnb reserves the right to implement a software feature on the Platform whereby Airbnb collects Taxes and TBID based on tax information supplied by the Host, and remits such Taxes and TBID to Hosts for ultimate reporting and remittance by the Host to the Taxing Jurisdiction. In such cases, a Host must provide to Airbnb its (i) applicable Tax identification or

registration number; (ii) applicable business identification number; and (iii) acknowledgement of its obligation to collect all Taxes and TBID owed on a Host's Taxable Booking Transactions and to remit and report any Taxes and TBID collected directly to the Taxing Jurisdiction (a "**Registered Host**"). Upon request from the Taxing Jurisdiction, and not more than once per consecutive twelve-month period, Airbnb will provide the Taxing Jurisdiction with copies of documentation related to Registered Hosts.

(E-1) Airbnb satisfies its obligations under this Agreement by remitting the full amount of Taxes and TBID collected on behalf of Hosts to the Taxing Jurisdiction, and in the case of Registered Hosts only, by remitting the Taxes and TBID collected on a Registered Host's Taxable Booking Transactions directly to the Registered Host.

AIRBNB LIABILITY

(F) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of Taxes and TBID, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any Taxes and TBID and/or penalties, interest, fines or other amounts assessed against it were not due or are the subject of a claim for refund under applicable law, or otherwise bar it from enforcing any rights accorded by law. Notwithstanding the above and solely with respect to Registered Hosts, Airbnb does not assume any liability for the failure of a Registered Host to comply with any applicable collection, reporting or remittance obligations related to Taxable Booking Transactions. Further, Airbnb does not assume any liability for collection based on information supplied by the Registered Host.

AUDIT

(G) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of Tax and TBID returns filed and supporting documentation. The Taxing Jurisdiction reserves the right to audit any individual Host for activity that has been brought to the attention of the Taxing Jurisdiction in the

form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(H) The Taxing Jurisdiction agrees to audit Airbnb on an aggregated and anonymized transaction basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Taxable Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The parties agree to utilize appropriate sampling audit methodologies based on a standard sample period which may be projected against the remainder of any periods open under the applicable statute of limitations, unless Airbnb elects, at its sole discretion, to undergo further audit of such open periods by the Taxing Jurisdiction.

GUEST AND HOST LIABILITY

(I) During any period in which this Agreement is effective, and provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit Taxes and TBID on Taxable Booking Transactions made on the Platform. Notwithstanding the above, Registered Hosts will be solely responsible for directly remitting Taxes and TBID collected on Taxable Booking Transactions to the Taxing Jurisdiction. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to Taxes and TBID for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(J) The Taxing Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders, investors, employees and other agents from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of Taxes and TBID or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to Taxes and TBID on any Taxable Booking Transactions prior to the

Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Taxing Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(K) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that, except with respect to Registered Hosts, it will notify (i) Hosts that Taxes and TBID will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of Taxes and TBID collected and remitted on each Taxable Booking Transaction.

TBID PARTICIPATION

(K-1) Solely for the purposes of satisfying any listing or reporting requirements under the Plan, Airbnb shall be listed as the “lodging business” for the purposes of any disclosure under the TBID Plan. Airbnb expressly waives the right to vote or otherwise participate or take any action relating to the TBID except for acting as a TBID Collector and remitting TBID to the Taxing Jurisdiction pursuant to the TBID Plan. Any Host shall be entitled to vote, participate or otherwise take any action that could be taken by a “lodging business” that collects and remits TBID directly to the Taxing Jurisdiction. The Taxing Jurisdiction shall accept transactional records produced by a Host from the Platform as sufficient evidence to substantiate the amount of TBID paid by any Host. The Taxing Jurisdiction shall post any notices required to be delivered to any “lodging business” on the Taxing Jurisdiction’s website.

LIMITATION OF APPLICATION

(L) This Agreement is solely for the purpose of facilitating the administration and collection of the Taxes and TBID with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America or of any State or subdivision or municipality thereof. Neither Party waives, and each Party expressly

preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

(L-1) If Airbnb expands the types of transactions that may be completed by Hosts and Guests on the Platform to include additional taxable services or products located in the County of Mariposa, and Airbnb decides in its sole discretion to collect and remit any applicable Taxes and TBID with respect to such transactions on behalf of Hosts and/or Guests, Airbnb agrees to provide reasonable notice to the Taxing Jurisdiction regarding the collection and remittance of such Taxes and TBID.

DURATION/TERMINATION

(M) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 30-day written notification to the other Party. Such termination will be effective on the first day of the calendar month following the 30-day written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any Taxes and TBID collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the effective date of termination.

(M-1) Either Airbnb or the Taxing Jurisdiction may terminate collection of TBID pursuant to this Agreement for convenience on thirty (30) days written notice to the other Party. Any termination of TBID under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any TBID collected from Guests up through and including the effective date of termination of this collection of TBID pursuant to this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the date of termination.

MISCELLANEOUS

(N) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of California without regard to its conflict of law principles.

(O) MODIFICATION. No modification, amendment, or waiver of any provision of this

Agreement shall be effective unless in writing and signed by both Parties.

(P) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(Q) 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.

(R) RELATIONSHIP OF THE PARTIES. The Parties are entering into an arm's-length transaction and do not have any other relationship, employment or otherwise. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

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

(T) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement 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.

(U) 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 the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(V) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(W) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. 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:

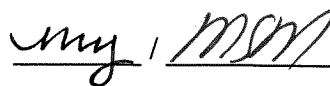
To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

Mariposa County Tax Collector
PO Box 247
4982 10th Street
Mariposa CA 95338
Fax: 209-966-6496
E-mail: _kwilliams@mariposacounty.org



IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause. Each page of this Agreement has been initialed by Airbnb and the Taxing Jurisdiction. This Agreement and the signatures set forth below shall be null and void unless both parties have delivered copies of this signature page prior to the effective date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: Mirei Yasumatsu
Signature of Authorized Representative

Mirei Yasumatsu, Global Tax Director
Name and Title of Authorized Representative

COUNTY OF MARIPOSA, CALIFORNIA

By: Miles Menetrey
Signature

Miles Menetrey, Chair
Mariposa County Board of Supervisors

APPROVED AS TO FORM:

Steven W. Dahlem
STEVEN W. DAHLEM
COUNTY COUNSEL