



# MARIPOSA COUNTY

Administration • 966-3222



## **RESOLUTION - ACTION REQUESTED 2019-579**

MEETING: October 1, 2019  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Tourism Bureau Agreement

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve a Three-Year Agreement with the Yosemite/Mariposa County Tourism Bureau to Provide Marketing, Film Commission and Emergency Public Information Services in an Amount Not to Exceed 3.25% of a Rolling Three-Year Average of Transient Occupancy Tax Receipts; and Authorize the Board of Supervisors Vice Chair to Sign the Agreement.

Yosemite/Mariposa County Tourism Bureau (YMCTB) is responsible for promotion and marketing activities that bring tourists to Mariposa businesses. They also manage the county's film commission and provide some public information services, particularly with visitors and lodging partners during natural disasters.

This agreement outlines a scope of work that is similar to prior years and captures the scope of services being provided. As directed earlier this year, this is a three-year agreement for a fixed \$500,000 in the first year and a funding formula in years two and three. The funding formula is equal to 3.25% of a rolling three-year average of Transient Occupancy Tax (TOT) receipts. An attached matrix provides possible projections on the dollar amounts that formula may yield.

This agreement continues the requirement for periodic progress and financial reports to the Board of Supervisors. As the agreement is consistent with Board direction, staff recommends approval at this time.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The term and compensation in this agreement were discussed during the regular Board of Supervisors meeting held May 28, 2019. Staff has constructed this agreement as directed.

The Board of Supervisors has adopted an agreement with YMCTB each year since 2007. Most recently, the Board adopted Resolution 18-639, a one-year agreement with a not-to-exceed amount of \$500,000.

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Resolution 17-775, approved November 14, 2017, is the only prior agreement that was funded by formula. The formula used at that time was four percent (4%) of a three-year rolling average. The formula was not continued in Fiscal Year 2018-2019 because of reduced revenues caused by the Ferguson Fire.

Since 2008, the County has contracted with YMCTB for services in the following amounts:

Fiscal Year	YMCTB Agreement	TOT Receipts
2008	\$510,000	\$10,331,070
2009	\$500,000	\$9,683,077
2010	\$450,000	\$10,281,307
2011	\$500,000	\$10,663,944
2012	\$500,000	\$11,460,827
2013	\$500,000	\$11,438,223
2014	\$500,000	\$11,624,190
2015	\$400,000	\$13,523,199
2016	\$600,000	\$14,342,174
2017	\$500,000	\$15,002,488
2018	\$571,571	\$15,101,700
2019	\$500,000	\$13,952,740*

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Per the attached possible funding matrix, the Board may decide to fund YMCTB using a different fixed or variable percentage rate over a three-year rolling average. Using a three-year rolling average increases the volatility in the funding amounts but also makes them more responsive to current conditions.

Alternatively, the Board may decide to keep the existing flat payment of \$500,000 or another flat payment amount. The Board could request additional information or considerations, if desired, or elect not to enter this agreement. These alternatives may require additional time or studies, which could in turn require interim solutions for implementation.

Any of the agreement options here can be executed for a single year or multiple years. Amendments to the term or compensation may require a new agreement to be brought at a future meeting.

### **FINANCIAL IMPACT:**

**Funds for this agreement (\$500,000) are included in the approved budget for this fiscal year.**

### **ATTACHMENTS:**

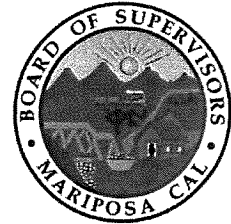
**Yos-Mariposa Tourism Bureau Agreement (DOCX)**

**Tourism Possible Funding Matrix (PDF)**



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## RESOLUTION - ACTION REQUESTED 2019-579

**RESULT:** ADOPTED [3 TO 2]  
**MOVER:** Merlin Jones, District II Supervisor  
**SECONDER:** Kevin Cann, District IV Supervisor  
**AYES:** Rosemarie Smallcombe, Merlin Jones, Kevin Cann  
**NAYS:** Marshall Long, Miles Menetrey

## AGREEMENT WITH THE YOSEMITE/MARIPOSA COUNTY TOURISM BUREAU

THIS AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of October, 2019, by and between the County of Mariposa, a political subdivision of the State of California, (“County”), and The Yosemite Mariposa County Tourism Bureau, (“Contractor”), pursuant to the following terms and conditions.

### WITNESSETH:

#### 1. TERM

The term of this Agreement shall commence on October 1, 2019 and terminate on June 30, 2022, unless extended as provided by this Agreement.

#### 2. SERVICES

Contractor shall provide marketing services for Mariposa County tourism and visitor activities as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

#### 3. COMPENSATION

Contractor shall be compensated in an amount not to exceed \$500,000 for services performed prior to June 30, 2020. For the second and third fiscal years of this agreement, compensation will be equal to 3.25% of a rolling three-year average of transient occupancy tax receipts as calculated by the County.

Equal payments amounting to one-third of the compensation for a given fiscal year shall be paid upon receipt of an approved invoice on or after October 1, January 1, and April 1. The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

#### 4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

##### A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury or disease.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

## B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **5. HOLD HARMLESS/INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County and its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of Contractor or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from sole negligence or willful acts of County.

## **6. INDEPENDENT CONTRACTOR**

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

## **7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

## **8. STATE AND FEDERAL TAXES**

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

## **9. ASSIGNMENT**

It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

## **10. NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

Mariposa County Tourism Bureau  
P.O. Box 967  
Mariposa, CA 95338

County of Mariposa  
5100 Bullion St  
P.O. Box 784  
Mariposa, CA 95338

## **11. COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

## **12. PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

## **13. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County Administrative Officer. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

## **14. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

## **15. TERMINATION AND RIGHTS UPON TERMINATION**

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. The County may terminate this Agreement for convenience upon written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

## **16. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

## **17. DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

## **18. CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

## **19. NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

## **20. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.



## **21. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **22. COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

## **23. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

## **24. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

## **25. AUTHORITY**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

## **26. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

## **27. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

**28. WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted 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.

**29. FUNDING AVAILABILITY**

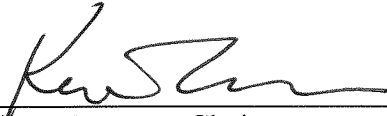
It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

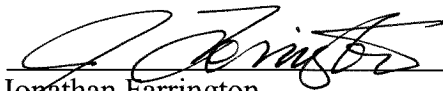
COUNTY OF MARIPOSA

By: Kevin Cann, Vice-Chair



Miles Menetrey, Chair  
Board of Supervisors

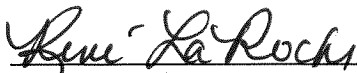
YOSEMITE / MARIPOSA COUNTY  
TOURISM BUREAU



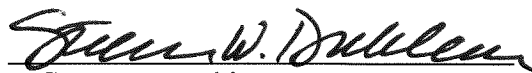
Jonathan Farrington  
Executive Director

ATTEST:

APPROVED AS TO FORM:



Rene LaRoche  
Clerk of the Board



Steven W. Dahlem  
County Counsel

Exhibit A  
SCOPE OF WORK

**1. Marketing**

Contractor will be responsible for marketing Mariposa County tourism and visitor activities. Duties will include but are not limited to:

1. Development and maintenance of tourism website.
2. Assist in promoting selected events in Mariposa County of interest to tourists based on appropriateness and return on investment.
3. Development of brochures promoting tourism in Mariposa County.
4. Development and placement of advertising promoting tourism in Mariposa County.
5. Marketing Mariposa County to the travel industry including providing a presence at international and domestic tourism trade shows.
6. Assist and coordinate activities with tourism-based businesses.
7. Development and maintenance of a local film commission.

**2. Marketing Reporting**

The Contractor will make two (2) public reports at regularly scheduled meetings of the Board of Supervisors. One report will be made in November or December and the other in May or June. Said reports will include at a minimum, the following information:

1. Specifics regarding activities undertaken by the Contractor.
2. Samples of promotional materials produced and distributed by the Contractor.
3. Statistics regarding placement of advertising and marketing pieces.

**3. Financial Reporting**

1. A financial report of the Contractor's activities with an annually compiled and reviewed financial statement prepared by a Certified Public Accountant.
2. Not less than annually, Contractor will provide an accounting of all funds provided by the County and the expenditure thereof, to include the vendor and the purpose of the expenditure.

**4. Film Commission**

1. Continue to promote and maintain a Yosemite/Mariposa County Film Commission page on its website – content to include shot locations, buildings, landscapes, recreation areas, etc. that might prove of interest to location scouts. A contact form would also be provided.
2. Maintain relevant promotional video specifically targeted at location scouts.
3. Manage inquiries and assist location scout with potential projects.
4. Provide relevant local authorities (Law enforcement, CHP, BLM, Forest Service, Yosemite NP, other) a detailed report on the nature of the filming in case additional permits or special support is required.
5. Maintain an affiliated film commission relationship with agencies and organizations to promote Yosemite/Mariposa County as a film destination.
6. Attend conferences or trade opportunities to create awareness for the county as film destination.

7. Develop and distribute press materials to use in the instance that a film is produced in the county to further promote our county as a tourist and film destination.

**5. Public Information and Crisis Communication Partner**

1. Provide public outreach to primarily transient tourist and visitors of Mariposa County during County designated emergencies.
2. Communicate specific approved messages via Yosemite Mariposa County Tourism Bureau's website and email databases to both the business and lodging industry and visiting public.
3. Mariposa County Office of Emergency Services will integrate Yosemite Mariposa County Tourism Bureau into the Emergency Operations Plan.