



AGREEMENT

By and between

California Travel and Tourism Commission

dba Visit California

and

CONTRACTOR

July 1, 2014 – June 30, 2015

AGREEMENT

THIS Agreement (the "**Agreement**") is by and between the California Travel and Tourism Commission dba Visit California ("**Visit California**"), a California Nonprofit Mutual Benefit Corporation, and **CONTRACTOR**, an Independent Contractor, ("**Contractor**").

SECTION 1. AGREEMENT TO PERFORM WORK.

Visit California and Contractor have agreed that Contractor shall perform the services set forth on the Scope of Work attached as **Exhibit A** and incorporated herein, pursuant to the terms and conditions of this Agreement.

SECTION 2. COMMENCEMENT AND EXPIRATION DATES

- A. The term of this Agreement shall be from **July 1, 2014 through June 30, 2015**.
- B. Visit California reserves the right to cancel this Agreement prior to the expiration date pursuant to Section 8.

SECTION 3. CONTRACT AMOUNT

- A. The Contractor agrees to perform the services required hereunder for a total not to exceed **\$AMOUNT** ("**Contract Amount**"), as shown and set forth in more detail on the Budget attached as **Exhibit B** to this Agreement.
- B. The Contract Amount to be paid the Contractor under this Agreement shall be compensation for all the Contractor's costs and expenses pursuant to this Agreement, including, but not limited to, labor, employee fringe benefits, operating expenses, overhead, employer taxes and insurance, subcontracting services, out-of-pocket expenses for travel and subsistence, and taxes due on equipment.
- C. Notwithstanding the foregoing, if the payment of out of pocket or other expenses is authorized by the Budget, the Contract Amount shall additionally include the amount of all authorized out of pocket and other expenses.
- D. Contractor may request additions, deletions or modifications to **Exhibit A** and/or **Exhibit B** in order to respond to additional work requests, changed circumstances or unanticipated expenses. HOWEVER, NO ALTERNATIONS OR CHANGES SHALL BE AUTHORIZED WITHOUT THE WRITTEN APPROVAL OF Visit California IN ITS SOLE DISCRETION. If Contractor makes any changes in the services described on **Exhibit A** or performs any work or services not described in **Exhibit A**, without written authorization from Visit California, Contractor will not be paid for the changed or additional work or services.
- E. Visit California shall not be a party to or obligated under any such contract or agreement, and the obligations of Visit California shall be limited to the terms and conditions set forth in this Agreement. Contractor is not authorized to enter into any contracts in the name of, or on behalf of, or otherwise bind Visit California. Any contract entered into by Contractor is on its own account for purposes of fulfilling its obligations under this Agreement. Only contracts,

agreements and amendments executed by the President of Visit California have the authority to bind Visit California.

SECTION 4. PAYMENT AND EXPENDITURE PROVISIONS

- A. The Contractor shall submit, in arrears, not more than once a month, an invoice to Visit California for costs incurred pursuant to this Agreement. All invoices must be submitted within 90 days of the work incurred, with supporting documentation evidencing the costs incurred and in sufficient detail to specifically identify all expense components set forth on the Budget. Invoices submitted later than 90 days after the work is incurred will not be paid. Invoices submitted without appropriate documentation will be rejected and will not be processed. Invoices shall be only for work authorized pursuant to the Scope of Work within 90 days of the cost incurred, shall be consistent with the Budget, and shall be subject to the Contract Amount limitation as described in Section 3 above.
- B. The invoice shall be submitted to Visit California, via email to accountspayable@visitcalifornia.com. The Program Manager should also be sent a copy of the invoice. Submitting an invoice only to the Program Manager may result in non-payment or delayed payment.
- C. Visit California shall make payment as promptly as fiscal procedures permit, upon receipt of the invoice, subject to approval of the Contract Manager, and contingent upon satisfactory completion of the terms of this Agreement.
- D. Visit California shall only pay out of pocket and other expenses if authorized pursuant to the Budget. All out of pocket travel expenses shall adhere to the Travel and Expense Management Policy for the Vendors of Visit California. Visit California reserves the right to revise the Travel and Expense Management Policy at any time. All invoices for expense reimbursement must be submitted with supporting documentation evidencing the costs incurred and in sufficient detail to allow Visit California to verify the validity of the expenses. In no event shall the Contractor request reimbursement from Visit California for obligations entered into or for costs incurred prior to the commencement date, or after the expiration or cancellation of this Agreement, as outlined in Section 8.
- E. Notwithstanding the foregoing, Visit California will make no payment under this Agreement until Commission has received a signed copy of this Agreement from Contractor.

SECTION 5. RECORD ESTABLISHMENT, ACCESS AND RETENTION

- A. The Contractor agrees that Visit California or its agent shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide Visit California or its agent with any relevant information and reasonable access upon request. The Contractor further agrees to maintain such records for a period of three (3) years following final payment under this Agreement and further agrees to keep such records separate from those of other activities unrelated to this Agreement.

- B. Upon inspection, the Contractor shall promptly implement any corrective measures recommended by Visit California or its representatives regarding the requirements of this Section.

SECTION 6. ACCOUNTING AND AUDITING REQUIREMENTS

- A. The Contractor is required to adhere to generally accepted accounting principles ("**GAAP**") and practices, consistently applied, that is capable of identifying all eligible and ineligible expenses consistent with the Budget.
- B. Visit California shall have the right to audit Contractor's financial records at any time, upon a reasonable notice. Should an audit by Visit California result in disallowance of funds previously disbursed to the Contractor, the Contractor shall reimburse all disallowed funds to Visit California within sixty (60) calendar days following the demand for reimbursement by Visit California.

SECTION 7. COMMUNICATION

- A. **PROGRAM MANAGER/ Visit California CONTACT in BOLD**, or an individual designated in writing by Visit California, shall be the Project Manager for this Agreement. This person shall have overall responsibility to administer, evaluate and follow-up the work of the Contractor during the term of this Agreement.
- B. All official communication and invoices from the Contractor to Visit California, shall be directed to the attention of **PROGRAM MANAGER/ Visit California CONTACT in BOLD**, or other designated individual of Visit California, at the following address and phone/fax numbers:

California Travel and Tourism Commission
dba Visit California
555 Capitol Mall, Suite 1100
Sacramento, CA 95814
Phone: 916 – 444-4429 FAX 916 – 444-0410
E-mail: **NAME**@visitcalifornia.com

All official communications and payments from Visit California to the Contractor shall be directed to the attention of **CONTRACTOR CONTACT in BOLD** or other designated individual of the Contractor, at the following address and phone/fax numbers:

CONTRACTOR NAME
ADDRESS
PHONE AND FAX
E-MAIL

SECTION 8. CANCELLATION PROVISIONS

- A. This Agreement may be canceled at any time by either party in writing with thirty (30) calendar days advance notice. If canceled:
1. the Contractor shall provide to Visit California, at Visit California's discretion, all work performed through the date of cancellation within thirty (30) calendar days of the cancellation date; and
 2. final payment shall be made to the Contractor only for the performance and costs authorized up to the date of cancellation upon receipt of the final invoice(s).
- B. Notwithstanding Section 8 (A), Visit California may cancel this Agreement verbally in whole or in part and later follow-up with written confirmation, giving the Contractor less than thirty (30) calendar days advance notice if:
1. full funding is not available for all of the project work outlined in Exhibit A; or,
 2. material defaults in either the Contractor's performance, or compliance with the terms of this Agreement occur and continue without timely correction or cannot be corrected. "Material default in performance" means the failure to comply with the terms and/or requirements of this Agreement. If the Contractor materially defaults in performance, Visit California may proceed with the work in any manner deemed proper by Visit California. The cost to Visit California for completion of the work shall be deducted from any sum due to the Contractor under this Agreement, and the balance, if any, shall be paid to the Contractor upon demand.
- C. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is delayed, interrupted or prevented by any occurrence not occasioned by the conduct of such party, whether the occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this agreement, or is otherwise beyond the reasonable control of such party, for whatever period of time after the occurrence is reasonably necessary to remedy the effects of the occurrence.

SECTION 9. COPYRIGHT AND OWNERSHIP OF MATERIALS

- A. The term "**Work**", as used in this Section, means all writings and printed matter including the medium by which it is recorded or reproduced, photographs, art work, pictorial reproductions, drawings or other graphic representations and works of a similar nature, sound recordings, films, tapes, original computer programs (including executable computer programs and supporting data in any form) and any other materials or products conceptualized, developed and/or delivered in the course of or under this Agreement. The "Work" does not include those materials licensed pursuant to Paragraph C of this Section.

- B. Ownership and Approval: In connection with any and all copyrightable Work developed or created by the Contractor or its employees or subcontractors in the course of performing and creating the Work, it is understood and agreed that such Work shall be produced as work made for hire when the Work is within the scope of the definition of a work made for hire in the United States Copyright Act. As such, the copyrights in such Work shall belong to Visit California and no further action shall be necessary to perfect Visit California's rights in them. Any original Work by the Contractor shall be approved by California Tourism prior to distribution or dissemination. In addition, the Contractor shall place or cause to be placed the following legend on all Work, inserting the year of the Work's creation in the blank space:

"Copyright @ 201-, by the California Travel and Tourism Commission dba Visit California. All rights reserved."

- C. Licenses: For work(s) requiring the use of copyrighted materials, the Contractor shall furnish California Tourism with the names and addresses of all copyright holder(s) or their agent(s), if any, and the terms of any license(s) or usage granted, at the time of delivery of the Work. Additionally if required by Visit California, Contractor shall submit a legal opinion to the effect that the anticipated use will not violate any copyright laws, regulations or other legal requirements in the jurisdictions where the copyrighted materials will be used. No licensed materials shall be used without prior written permission of Visit California.
- D. Assignment: If for any reason, Visit California is not deemed to be the owner of the copyright and copyright interest in the Work, then the Contractor hereby assigns all such rights to Visit California, and the Contractor shall cause or require its personnel and subcontractors to assign to the Contractor or Visit California, at the time of creation of the Work, all such rights they may have in the Work, all without any requirement for further consideration. The Contractor shall take such further actions, and shall cause or require its personnel or subcontractors to take such further actions, including the execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignments.

SECTION 10. WARRANTIES AND INDEMNIFICATION

- A. Warranties: The Contractor represents and warrants that:
1. it is free to enter into and fully perform this Agreement;
 2. it has secured or will secure all rights and licenses necessary for the production of the Work;
 3. neither the Work nor any of the materials contained therein, nor the exercise by either party of the rights granted in this Agreement, shall infringe upon or violate the rights or interests of any person or entity;
 4. neither the Work nor any part of it shall:
 - a. violate the right of privacy of,
 - b. constitute a libel or slander against; or,

- c. infringe upon the copyright, literary, dramatic, statutory or common law rights of any person, firm or corporation; and,
5. it has not granted and shall not grant to any person or entity any right that would or might derogate, encumber or interfere with any of the rights granted to Visit California in this Agreement.

B. Indemnity:

The Contractor shall indemnify, defend and hold harmless Visit California and its officers, agents and employees from and against any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material persons, laborers and any other person, firm or corporation furnishing or supplying work, services, equipment, materials or supplies in connection with the performance of this Agreement, and from and against any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement, or which any of them may sustain because of the use of the Work and any other materials furnished by the Contractor under this Agreement, or because of the breach of any of the representations or warranties made in this Agreement. The Contractor agrees to incorporate the foregoing indemnity provisions in any consultant or subcontract agreement and to have Visit California added as a named indemnitee.

SECTION 11. STATE TRADEMARKS AND SERVICE MARKS

- A. Certain copyrighted material, trademarks and service marks in collateral material are the exclusive property of Visit California or State of California, and may not be used alone or in combination with other words, phrases, logos or marks, without advance written permission of that party. Contractor shall obtain the written approval from Visit California for any advertising or promotional materials developed by Contractor, including the right to use copyrighted material, trademarks or service marks, prior to any distribution. Any copyrighted material, trademarks or service marks shall be set apart from other text as required by Visit California and all trademarks and service marks shall bear the statutory trademark/service mark notice.
- B. Any State trademarks or service marks may require special approval and review of all preprinting proofs. Contractor shall assign exclusive use of printed materials, including protected material, developed for Visit California pursuant to this Agreement to Visit California without further cost or expense.

SECTION 12. INCORPORATION OF PROPOSAL OR BID

- A. The Contractor's proposal or bid delineating Scope of Work and deadlines is not attached hereto, but is expressly incorporated by reference into this Agreement (Exhibit A Scope of Work.) In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal or bid, this Agreement shall be controlling.

SECTION 13. POLITICAL REFORM ACT COMPLIANCE.

Contractor understands and acknowledges that Visit California is subject to the terms and requirements of the Political Reform Act of 1974, Title 9, commencing with Section 81000 of the California Government Code, and the rules and regulations which implement and interpret the act, each as amended from time to time (collectively, the "PRA"). Contractor further understands and acknowledges that Contractor may be subject to requirements of the PRA as a result of the contractual relationship with Visit California pursuant to the Agreement, including, without limitation, the requirement that certain designated employees make economic interest filings with the State of California as a "consultant" pursuant to Visit California's Conflict of Interest Code. The Contractor is subject to Visit California's Conflict of Interest Code approved by the California Fair Political Practices Commission. Based on a review of the authority and duties of the employees of Contractor providing services to Visit California, Visit California shall make a determination of the employees constituting consultants, and the level of economic interest disclosure required of such employees. This determination is subject to modification as the employees working on Visit California's account and/or their duties change. Contractor agrees to comply with the requirements of the PRA, to cause its employees to make all required filings when and as due, and that the determination of Visit California as to the parties constituting a "consultant" and the required filings shall be final and determinative.

SECTION 14. INSURANCE REQUIREMENTS

A. Required Coverage

During the terms of this Agreement, Contractor will procure and maintain insurance against claims for injuries to persons or damages to property. Contract's insurance will have limits no less than:

1. General Liability: \$2,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Worker's Compensation Insurance: With coverage and limits as required by law.

B. Other Insurance Provisions

Commission shall be covered as an insured party under the policies. General liability coverage can be provided in the form of an endorsement to Contractor's insurance policy naming Visit California as an insured party. Contractor's insurance coverage will be primary insurance as respects Visit California, its officers and employees. Any insurance or self-insurance

maintained by Visit California, its officers, or employees will be excess of Contractor's insurance. All insurance coverage required to be carried hereunder shall be carried with insurance companies rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better. Contractor's insurance shall not be subject to cancellation without thirty (30) days prior written notice to Visit California. Contractor shall provide evidence of renewal of such policies to Visit California not later than ten (10) days prior to the commencement of any renewal term. Contractor will require and verify that all subcontractors maintain insurance subject to all of the requirements stated herein. Contractor shall provide Visit California with current insurance certificates evidencing the required insurance coverage. Visit California reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 14. NON-DISCRIMINATION: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of 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.

SECTION 16. DISPUTE RESOLUTION

A. DISPUTES UNDER \$250,000. The parties agree that any any action, claim, controversy or dispute by, between or among the parties, that arise out of or relate to or based upon this Agreement with an amount in dispute or claiming damages in an amount under \$250,000, shall be resolved through binding arbitration ("**Arbitration Proceeding**") in accordance with the Federal Arbitration Act (9 U.S.C. sections 1-16). Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (a) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (b) requires that federal and state courts rigorously enforce agreements to arbitrate, and (c) requires that the scope of arbitrable issues be resolved in favor of arbitration. A neutral arbitrator selected by the parties, or if the parties cannot agree, by the American Arbitration Association, shall conduct the arbitration at the arbitrator's office closest to Sacramento, California. The arbitrator shall conduct the arbitration according to the American Arbitration Association

Commercial Arbitration Rules or such other procedures as may be agreed upon by the Parties. The parties agree to (i) join into the arbitration proceeding hereunder or (ii) join any other arbitration proceeding of a dispute arising out, relating to, or based upon this Agreement, being conducted by, persons or entities related to the dispute that may be necessary to completely resolve the dispute. The arbitration shall determine all rights and obligations relating to, arising out of or based upon this Agreement. The arbitrator's award shall be final, binding and enforceable in the absence of fraud. The arbitrator shall have the authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of California. The arbitrator shall equitably allocate payment of the costs and attorneys' fees of the parties in light of the arbitrator's evaluation of the relative merits or lack thereof of the respective claims of the parties. THE PARTIES HEREBY AGREE TO ARBITRATION AND WAIVE THEIR RIGHTS TO A JURY TRIAL IN ACCORDANCE WITH APPLICABLE STATE LAW AND THE FEDERAL ARBITRATION LAW.

B. JUDICIAL REFERENCE. Any controversy, dispute or claim between the parties relating to this Agreement or any other document, instrument or transaction between the parties with an amount in dispute or claiming damages at or over \$250,000 (each, a "Claim"), will be resolved by a reference proceeding in California pursuant to Sections 638 et seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to reference. Venue for the reference will be the Superior Court in Sacramento County California (the "Court"). The following matters shall not be subject to reference: (i) exercise of self-help remedies (including without limitation set-off) and (ii) temporary, provisional or ancillary remedies (including without limitation temporary restraining orders or preliminary injunctions). The exercise of, or opposition to, any of the above does not waive the right to a reference hereunder. The referee shall be selected by agreement of Contractor and Visit California. If Contractor and Visit California do not agree, upon request of any party a referee shall be selected by the Presiding Judge of the Court. The referee shall determine all issues in accordance with existing case law and statutory law of the State of California, including without limitation the rules of evidence applicable to proceedings at law. The referee is empowered to enter equitable and legal relief, and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision, and pursuant to CCP §644 the referee's decision shall be entered by the Court as a judgment or order in the same manner as if tried by the Court. The final judgment or order from any decision or order entered by the referee shall be fully appealable as provided by law. Contractor and Visit California reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial if granted, will be a reference hereunder. AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, CONTRACTOR AND VISIT CALIFORNIA AGREE THAT ALL CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT A JURY.

SECTION 17. VISIT CALIFORNIA LEGAL STATUS. Visit California has informed Contractor and Contractor acknowledges that Visit California is a California non-profit mutual benefit corporation authorized and governed by the California Tourism Marketing Act, (California Government Code §§ 13995 et seq) (the "Act"). Pursuant to the Act the composition of the Commission is prescribed, and Visit California is subject to various requirements which otherwise apply to public entities in California, including, without limitation, the PRA as referenced above in Section 13, the California Public Records Act (California Government Code §§ 6250 et seq), and the Bagley-Keen Open Meeting Act (California Government Code §§ 11120 et seq). Notwithstanding the foregoing, Visit California is not subject to the requirements of the California Public Contract Code or the California Administrative Procedure Act (California Government Code §§ 11340 et seq).

SECTION 18. GENERAL PROVISIONS

- A. Any amendment to this Agreement, including without limitation an amendment to increase the Budget or modify the Scope of Work, must be in writing and signed by both parties.
- B. No provision of this Agreement shall be deemed waived by either party, unless such waiver is in writing and is signed by the party against whom it is sought to be enforced.
- C. The Contractor, subcontractor(s), and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Visit California.
- D. Neither Visit California nor the Contractor shall assign this Agreement in whole or in part.
- E. Time is of the essence in this Agreement.
- F. Except as otherwise stated herein, the terms of this Agreement constitute the entire agreement between and among the Parties hereto. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.
- G. No action or want of action on the part of any party hereto at any time to exercise any rights or remedies conferred upon it under this Agreement shall be, or shall be asserted to be, a waiver on the part of any such party of any of its rights or remedies hereunder.
- H. All exhibits to which reference is made are deemed incorporated in this Agreement whether or not actually attached.
- I. This Agreement shall be governed by the laws of the State of California.
- J. In the event of any dispute between the parties hereto involving the covenants or conditions contained in this Agreement or arising out of the subject matter of

this Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

[SIGNATURES ON FOLLOWING PAGE]

SAMPLE

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

CONTRACTOR NAME
CONTRACTOR BUSINESS

Caroline Beteta, President & Chief Executive Officer OR
Matthew Sabbatini, Vice President, Operations
Visit California

Date _____

Date _____

Commissioner Jeff Senior
Visit California

Date _____

EXHIBIT A
SCOPE OF WORK

The Contractor shall be required to complete the following work. The maximum amount available for this work is **INSERT DOLLAR AMOUNT**

SAMPLE

EXHIBIT B
BUDGET

SAMPLE

**EXHIBIT C
CONTRACTOR AND CONTRACT MANAGERS**

Visit California	Contracts Management (CONTRACTOR)
Name: Title: California Travel and Tourism Commission d.b.a Visit California Address: 555 Capitol Mall, Suite 1100 Sacramento, CA 95814 Telephone: 916. 444-4429 FAX: 916. 444-0410	Federal I.D. No.: Name: Title: Address: Telephone: FAX:

Contractor Details:

Complete contractor name:

Mailing address:

Primary contact:

Title:

Phone numbers:

Fax:

E-mail:

Staff Working on Account:

Executive Director and
Account Manager:

Account Team: