

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement"), dated as of July 1, 2023 ("Effective Date") is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Sonoma County Tourism Bureau, Inc., a California non-profit mutual benefit corporation (hereinafter "Consultant").

R E C I T A L S

WHEREAS, Consultant is designated in the ordinance ("Ordinance") creating the Sonoma County Tourism Business Improvement Area ("SCTBIA") as the initial and successive contractor to be given responsibility for carrying out services, activities and programs promoting tourism in Sonoma County ("Services") funded by assessments from within the SCTBIA and by other revenue sources; and

WHEREAS, Consultant was formed in accordance with the requirements of the Ordinance and is willing to provide the Services on the terms and condition set forth in this Agreement.

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

A G R E E M E N T

1. Scope of Services.

1.1 Consultant's Specified Services. Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control.

1.2 Cooperation With County. Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant 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 Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, 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. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. Payment.

2.1 Sources. During the term of this Agreement, Consultant shall receive the following payments from County:

All revenues received by County from assessments made pursuant to the Ordinance ("Assessments"), less reimbursements and fees authorized by the Ordinance.

2.2 Uses. Consultant shall use funds received pursuant to Section 2.1 only for purposes authorized by, and subject to the terms and conditions of, the Ordinance, the California Constitution (including, but not limited to, California Constitution article XIII C, section 1(e)), Streets and Highways Code section 36533-35, Stats. 2013 ch. 552 §2 (AB 483, enrolled as Government Code section 53758) and this Agreement. This Agreement will be administered on behalf of the County by the Director of the Economic Development Board, who in consultation with the County Counsel's Office and the County Administrator's Office, may authorize disbursements of Assessments to Contractor solely for the purposes authorized in the Ordinance. Contractor shall reimburse the Sonoma County Counsel's Office and the Economic Development Board for the costs to review the uses of the funds and ensure compliance with this Agreement ("monitoring fees"). Monitoring fees shall be deducted by the County semi-annually from any transient occupancy tax proceeds ("Proceeds") paid by County to Consultant pursuant to the Agreement for Services Transient Occupancy

Tax Funding of even date herewith under which County agrees to pay such Proceeds to Consultant prior to remitting Assessments to the Consultant. Monitoring fees during the term of this Agreement shall not exceed \$25,000, and shall be supported by documentation provided by County to Consultant reflecting the actual cost of the review.

2.3 Schedule. County shall pay the amounts described in Section 2.1 to Consultant quarterly on the first business day after the 15th day of August 2023, November 2023, February 2024 and May 2024. Before making these payments, the Director of the County of Sonoma Economic Development Board, in coordination with the County Counsel's Office and the County Administrator's Office, shall conduct such investigations of the performance of Consultant and such examinations of the books and records of Consultant, as he or she shall deem necessary to establish that Consultant is in compliance with the terms and conditions of this Agreement and the Ordinance. If the Director of the Economic Development Board, in coordination with the County Counsel's Office and the County Administrator' Office, determines that Consultant is in breach of any provision of this Agreement or the Ordinance, he or she may withhold any payment due.

3. Term of Agreement. The term of this Agreement shall be from July 1, 2023 to June 30, 2024 unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant 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, County may terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination, if Consultant does not cure the reason given within 10 days of receiving the written notice.

4.3 Procedures Relating to Termination. If County terminates this Agreement pursuant to Section 4.1 or 4.2, or if the SCTBIA is disestablished as provided in the Ordinance, or if the term of this Agreement expires, the following procedures shall apply. Consultant's obligations under this Section 4.3 are in addition to those contained in Section 9.8 and 9.9 of this Agreement.

4.3.1 Transfer of or Payment for Property. County and Consultant agree that all property (both tangible property and intangible property such as intellectual property) either (a) acquired by Consultant directly from County, or (b) acquired using funds provided by County pursuant to Section 2.1(a) or Section 2.1(b) of this Agreement, or (c) acquired by Consultant using funds provided by

County prior to the term of this Agreement (the "Property") shall be used exclusively for the purposes set forth in the Ordinance and Section 2.2 of this Agreement. No later than twenty (20) days before termination, expiration, or disestablishment, Consultant shall deliver to County a complete list of all Property. For each item of Property, Consultant shall, as designated by County at County's option, either (1) transfer title to and deliver the Property to County (or, if directed by County, to a successor Consultant pursuant to Section 33-16(d) of the Ordinance), or (2) pay to County the then-current fair market value of the Property. Consultant shall fully cooperate with County following termination, expiration, or disestablishment to ensure that all Property necessary to the continued operation of the tourism marketing program are transferred and delivered in a prompt and timely manner in order to minimize disruption to the tourism marketing program.

4.3.2 Assignment of Agreements. Consultant shall use its best efforts to ensure that all contracts, leases, and other agreements entered into between Consultant and third parties contain language allowing the contracts, leases, and other agreements to be assigned to the County or a successor Consultant. No later than twenty (20) days before termination, expiration, or disestablishment, Consultant shall provide County with a list of all contracts, leases, and other agreements. Consultant shall assign to County or, if directed by County, to a successor Consultant, any contract, lease, or other agreement designated by County.

4.3.3 Accounting. Within thirty (30) days of termination, expiration, or disestablishment, Consultant shall provide County with a complete accounting of all money and other financial assets (including, but not limited to, money market funds, notes, accounts payable, securities, claims, etc.) held by or for Consultant that (a) were acquired by Consultant directly from County, or (b) were acquired using funds provided by County pursuant to Section 2.1 of this Agreement (including assets constituting or acquired using the proceeds from the sale or disposition of Property or the proceeds from any agreement funded by Consultant using funds received from the County) (the "Financial Assets"), and shall transfer such Financial Assets to County.

4.3.4 Cooperation; Payment of Transition Costs. In the event of termination, expiration, or disestablishment, Consultant shall fully cooperate with County in order to transfer the operation of the tourism marketing program to County or to a successor consultant in an orderly and expeditious manner.

4.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Economic Development Board Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which 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 Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. Consultant's obligations under this Section 5 shall not be paid or discharged using funds paid to Consultant by County under Section 2.1 or using funds derived from any assets or property acquired by Consultant using funds paid to Consultant by County under Section 2.1 except proceeds from any policy of insurance maintained by Consultant under Section 6.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant'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 Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not exceed the delegated signature authority of the Department Head and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant 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 thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such

work. Consultant 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 the County.

9. Representations of Consultant.

9.1 Standard of Care. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted 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 Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, 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. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County.

9.4 Taxes. Consultant 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. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Consultant 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 County for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant 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 County disclosing Consultant's or such other person's financial interests.

9.7 Statutory Compliance/Living Wage Ordinance. Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Consultant 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, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.11 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation 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 right to demand adequate assurance of future performance. Nothing in this Article limits County’s right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. 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.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:

Economic Development Board
Attn: Rebekah Heinze
141 Stony Circle, Ste 110
Santa Rosa, CA 95401
rebekah.heinze@sonoma-county.org

TO: CONSULTANT:

Sonoma County Tourism Bureau
400 Aviation Blvd., Ste 500
Santa Rosa, CA 95403
cvecchio@sonomacounty.com

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by County 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 this Agreement.

13.2 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 remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County 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. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 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.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this

Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 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.

13.7 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.

13.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

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

13.10 Counterpart; Electronic Signatures. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: _____

By: _____

Name: _____

Title: _____

Date: _____

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE
REVIEWED, ON FILE, AND
APPROVED AS TO SUBSTANCE FOR
COUNTY:

By: _____
Department Director or Designee

Date: _____

APPROVED AS TO FORM FOR
COUNTY:

By: _____
County Counsel

Date: _____

EXECUTED BY:

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board of
Supervisors

Exhibit A – Scope of Services

Consultant shall provide the following services to County. This scope of work reflects the desire of County to provide tourism marketing activities as contemplated by the California Constitution, including article XIII C, section 1(e), Stats. 2013 ch. 552 §2 (AB 483, enrolled as Government Code section 53758), Streets and Highways Code sections 36533-35 and the Ordinance.

1. Structure of SCTB. SCTB shall be a California non-profit corporation with a Board of Directors selected and constituted in accordance with the terms and conditions of the Ordinance. SCTB shall operate in accordance with duly authorized and adopted Articles of Incorporation, Bylaws and Board resolutions and shall hold meetings in accordance with the Brown Act. Appointments to the Board of Directors shall be made at the Board's annual meeting (in the first calendar year quarter), and shall be allocated based on the requirements established in the Ordinance as applied to the respective contributions made by the parties during the preceding calendar year. If such allocation results in the reduction in the number of directors appointed by the County, any then-serving director previously appointed by the County may serve the remainder of his or her term (as designated by the Sonoma County Board of Supervisors upon appointment of that director) as a non-voting, ex-officio member of the Board of Directors. SCTB shall serve as the SCTBIA Advisory Board during the term of this Agreement in accordance with the terms and conditions of Streets & Highways Code section 36530 unless terminated in accordance with Section 4 of this Agreement.

2. Transition of Responsibilities. County hereby grants to SCTB an exclusive license to use the assets listed on the attached Schedule 2.a. during the term of this Agreement.

3. Responsibilities of the SCTB:

a. SCTB will provide and fund projects, programs and activities that benefit lodging establishments within the SCTBIA in compliance with Streets and Highways Code section 36533-35, California Constitution article XIII C, section 1(e) and Stats. 2013 ch. 552 §2 (AB 483, enrolled as Government Code section 53758). This includes promotion of the SCTBIA as an overnight tourism destination and the provision of direct visitor services. Assessment funds shall be used exclusively for the forgoing purposes. SCTB shall reimburse the monitoring services provided pursuant to this Agreement by the Sonoma County Economic Development Board and the Sonoma County Counsel's Office to review the use of these funds and review for compliance with all state and local laws as set forth in Sections 2.2 and 2.3 of this Agreement.

b. SCTB will provide and fund such additional projects, programs and activities to promote tourism in Sonoma County as may be made possible through other non-Assessment funding sources. These other funds must be maintained and accounted for separately from Assessment funds.

c. SCTB shall perform and fund the specific projects, programs, and activities as described in the annual report referenced in Section 3.d below and in accordance with the terms of this Agreement. In addition, SCTB shall draft a Marketing Plan describing in

detail the specific projects, programs, and activities to be performed, and containing a detailed budget for carrying out those projects, programs, and activities. Such Scope of Services shall be submitted to the Director of the Economic Development Board for review and approval. If approved, the Scope of Services shall be incorporated by reference as a part of this Agreement, and SCTB shall carry out its activities in accordance with the Scope of Services.

d. SCTB shall perform its responsibilities in accordance with the Parking and Business Improvement Area Law of 1989 (Sections 36500 *et seq.* of the California Streets and Highways Code), California Constitution article XIII C, section 1 (e), and Stats. 2013 ch. 552 §2 (AB 483, enrolled as Government Code section 53758). Those responsibilities include performance of the duties of the Advisory Board, which include, but are not limited to:

- i. Preparation of recommendations to the Board of Supervisors regarding the expenditure of Assessment funds, the classification of businesses, and the method and basis of levying the assessment, in accordance with Streets and Highways Code section 36530.
- ii. Preparation of the annual report required by Streets and Highways Code section 36533, which shall include any recommended changes to boundaries, the improvements and activities to be provided for that fiscal year, an estimate of cost for providing the improvements and activities, the method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his/her business for that fiscal year, the amount of any surplus or deficit revenues to be carried over from a previous fiscal year, and the amount of any contributions to be made from sources other than assessments. The report also must demonstrate that the assessments meet the California Constitution's requirements (for example, demonstrate that the assessments are imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or the privilege). Cal. Const. art. XIII C, section 1 (e) and Stats. 2013 ch. 552 §2 (AB 483, enrolled as Government Code section 53758).

e. SCTB will develop and maintain financial records related to receipt and/or expenditure of all funds received from County. The County will produce a list of three qualified auditing firms from which the Contractor may select one. SCTB shall retain one of the qualified auditors named by the County to audit its operations annually. The annual audit will include a review of travel and meal expenses to ensure compliance with policies. In addition, County has the right to audit the books and records of SCTB at any time. The audit shall cover the time period from July 1, 2023 to June 30, 2024. The independent audit reports shall be provided to the Sonoma County Economic Development Board, County Counsels' Office and County Administrator within 30 days of receipt from the SCTB's auditor. The audit will be provided to the County no later than December 1 for the prior Fiscal Year.

- f. By March 15, 2024, the SCTB shall submit to the Director of the Sonoma County Economic Development Board (“EDB”) or their designee and the Sonoma County Counsel’s Office, for Board of Supervisors’ approval, a summary report of actual expenditure and program accomplishments during the preceding term of the Agreement.
- g. By March 15, 2024, the SCTB shall submit to the Director of the EDB or their designee, for Board of Supervisors’ approval, a summary report comparison of the SCTB annual marketing plan and actual outcomes. In addition, the SCTB will also provide additional return on investment (ROI) measures that are to be determined by mutual agreement between the SCTB and the Director of the EDB or their designee.
- h. By March 15, 2024, the SCTB shall submit to the Director of the EDB or their designee and the Sonoma County Counsel’s Office, for action by the Sonoma County Board of Supervisors, the Annual Report required by Sections 36533-36542 of the Streets & Highways Code pertaining to continuance of the SCTBIA and the levy of Assessments for the following fiscal year in compliance with this Agreement. SCTB shall have full responsibility for preparing the information and cost estimates required for continuation of the SCTBIA and the continuation of the levy and collection of Assessments, including non-County legal assistance.
- i. By March 15, 2024, after consultation with the County, SCTB shall prepare and present to the Director of the Economic Development Board any and all changes to this Agreement, and the Marketing Plan, proposed for the following fiscal year.
- j. SCTB will provide one (1) representative to serve on the Sonoma County Workforce Investment Board (WIB). The representative will assist the continued development of a hospitality training program for the tourism industry.
- k. SCTB will allow reasonable access to, and use of, its database information to EDB for the purpose of providing the industry with key economic information. The EDB will limit the frequency of its access to and use of the database information to no more than seven times per year. Data will be provided in an Excel format.

SCHEDULE 2.a.
(List of Licensed Assets)

Advertising/Service Marks

- Logo Sonoma County - Owned by County of Sonoma
- Partnership Logo - Owned by County of Sonoma
- Service Mark - "The Official Sonoma County Visitor's Guide"- owned by County of Sonoma

Web-related

Domain Names - The www.SonomaCounty.com domain name purchased by SCTB from WebPerceptions. The domain name is registered with Network Solutions:

Domain Name	Expiration
SonomaCounty.com	01-January-2025

All domain names purchased and owned by the SCTB become the property of the County in the event of disestablishment or termination.

Images, Video and Text

- The online appellation map, to which SCTP has non-exclusive rights of use.
- To the extent that County has the right to license their use, any and all still images created, acquired or used by SCTP to promote tourism.
- To the extent that County has the right to license their use, any and all video images created, acquired or used by SCTP to promote tourism. To the extent that County has the right to license their use, any and all textual or graphic works created, acquired or used by SCTP to promote tourism.

Exhibit B

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d. Economic Development Board and the County of Sonoma, their Officers, Agents and Employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.

- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

5. Documentation

- a. The Certificate of Insurance must include the following reference: Tourism Attraction and Promotion.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1, 2 or 3 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Economic Development Board and the County of Sonoma, their officers, agents and employees, 141 Stony Circle, Ste. 110, Santa Rosa, CA 95401.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

6. Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

7. Material Breach

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.