

AGREEMENT BETWEEN THE CITY OF SALINAS AND THE SALINAS VALLEY TOURISM AND VISITOR'S BUREAU



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**AGREEMENT BETWEEN
THE CITY OF SALINAS AND THE SALINAS VALLEY TOURISM AND VISITOR'S
BUREAU**

This Agreement (the "Agreement" and/or "Contract") is made and entered into this 13th day of August, 2019, between the **City of Salinas**, a California Charter city and municipal corporation (hereinafter "City"), and the **Salinas Valley Tourism and Visitor's Bureau**, a 501(c)(4) organization (hereinafter "SVTVB").

RECITALS

WHEREAS, pursuant to the Monterey County Tourism Improvement District (MCTID) Management District Plan (MDP), an assessment of \$0.50 is collected from all Salinas lodging facilities, as defined therein, and is remitted to the City of Salinas (hereinafter "Assessment"); and

WHEREAS, these funds may be used at the discretion of the City of Salinas for the purpose of promoting overnight stays at lodging facilities within the City of Salinas; and

WHEREAS, SVTVB was chosen by Visit California to operate a California Welcome Center within the City of Salinas; and

WHEREAS, SVTVB has provided the City with information demonstrating that activities typically conducted by Welcome Centers have the effect of increasing local overnight stays; and SVTVB the City and the SVTVB desire to enter into this Agreement to provide for the City's contribution of funding to the Welcome Center as a means of further promoting overnight stays at lodging facilities within the city of Salinas.

NOW, THEREFORE, City and SVTVB agree as follows:

TERMS

- 1. Scope of Service.** The scope of SVTVB's services are described in **Exhibit B**, attached hereto and incorporated herein by reference.
- 2. Term; Completion Schedule.** This Agreement shall commence on July 1, 2019 and shall terminate on June 30, 2020. The term may be renewed for successive periods of one (1) year each, commencing on July 1st and ending on June 30th of the following calendar year upon the mutual written consent of the Parties. The City Manager or his/her designee has the administrative authority to enter into renewals of this Agreement, subject to available funding.
- 3. Compensation.** City agrees to pay SVTVB a total amount of funds equal to the amount of the above-referenced assessment actually remitted to the City of Salinas during the period of July 1, 2019 through June 30, 2020, less one percent (1%) of said assessment, which shall be

retained by the City of Salinas to cover its administrative costs. In no case shall compensation to SVTVB exceed this amount. City shall pay this amount to SVTVB as follows:

- a. City shall remit monthly payments of \$10,000 to SVTVB beginning as of July 2019, and for each month thereafter for the term of this Agreement.
- b. On or after July 1, 2020, City shall remit to SVTVB all remaining assessment monies collected within the period defined above, less the one percent of the assessment reserved for the City as defined above.
- c. If at any point during the term of this Agreement the assessment remittances received less the amount needed to cover the City's administrative costs is insufficient to pay the entirety of an invoice submitted for the amount described above, the City shall, at its discretion, perform one of the following actions:
 - i) Pay the invoice in full, if the City reasonably believes that future remittances will cover the costs to be paid;
 - ii) Notify SVTVB of the shortfall, and pay the invoice in full once sufficient TID monies have been received; or
 - iii) Notify SVTVB of the shortfall and pay the currently available monies due to SVTVB. SVTVB shall be entitled to receive payment for any shortfall if and/or when TID monies are collected during the term of this Agreement.
 - iv) SVTVB may request, and the City shall reasonably provide, a current fund balance reflecting the amounts of TID funds remitted to the City, as such records are available to the City upon the date of the request, as well as the amount of funds paid to the SVTVB to date.

4. Billing. SVTVB shall submit to City an invoice, prepared in a form satisfactory to City, describing its services and providing reports and/or information for the period covered by the invoice. Each invoice shall represent one or more whole months and individual months shall not be divided among multiple invoices. Except as specifically authorized by City, SVTVB's invoices shall include the following information:

- (A) A brief description of services performed, including verification that the services identified in Exhibit B have been performed in accordance with that Exhibit;
- (B) The date the services were performed;
- (C) Reports and/or other information required by Exhibit B; and
- (D) The SVTVB's signature.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement. Provided that the invoices meet the requirements of this Agreement, the City will be obligated to remit the amount of \$10,000 in full satisfaction of the each monthly invoice submitted.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if SVTVB submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement (including its exhibits), City shall not be obligated to process any

payment to SVTVB until thirty (30) days after a correct and complying invoice has been submitted by SVTVB. The City shall process undisputed portion immediately.

5. Meet & Confer. SVTVB agrees to meet and confer with City or its agents or employees with regard to services as set forth herein as may be required by the City to ensure timely and adequate performance of the Agreement.

6. Additional Copies. If City requires additional copies of reports, or any other material which SVTVB is required to furnish as part of the services under this Agreement, SVTVB shall provide such additional copies as are requested, and City shall compensate SVTVB for the actual costs related to the production of such copies by SVTVB.

7. Responsibility of SVTVB. By executing this Agreement, SVTVB agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner. By executing this Agreement, SVTVB further agrees and represents to City that the SVTVB possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of SVTVB to do and perform SVTVB's work.

8. Responsibility of City. The City agrees to:

(A) Assist SVTVB by placing at its disposal all available information pertinent to this Agreement, including but not limited to, previous reports and any other data relative to this Agreement. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

(B) Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by SVTVB and render verbally or in writing, as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of SVTVB.

(C) Ray E. Corpuz, City Manager, or his designee, shall act as City's representative with respect to the work to be performed under this Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to SVTVB's services. City may unilaterally change its representative upon notice to the SVTVB.

9. Acceptance of Work Not a Release. Acceptance by the City of the work to be performed under this Agreement does not operate as a release of SVTVB from professional responsibility for the work performed.

10. Indemnification and Hold Harmless.

SVTVB shall defend, indemnify, and hold harmless the City and its officers, officials, employees, volunteers, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in

connection with SVTVB's performance of work hereunder, including the performance of work of any of SVTVB's subcontractors or agents, or SVTVB's failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

11. Insurance. SVTVB shall procure and maintain for the duration of this Agreement insurance meeting the requirements specified in **Exhibit A** hereto.

12. Access to Records. SVTVB shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to SVTVB by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during SVTVB's usual and customary business hours. SVTVB shall provide proper facilities to City's representative(s) for such access and inspection.

13. Non-Assignability. It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of SVTVB. This Agreement is personal to SVTVB and shall not be assigned by it without express written approval of the City.

14. Termination.

(A) City shall have the authority to terminate this Agreement, upon ten days written notice to SVTVB, as follows:

- (1) If in the City's opinion the conduct of the SVTVB is such that the interest of the City may be impaired or prejudiced, or
- (2) If in the City's opinion the conduct of the SVTVB is in violation of the requirements of the operation of a California Welcome Center as provided by Visit California.

(B) Upon termination, SVTVB shall be entitled to payment of such amount as fairly compensates SVTVB for all work satisfactorily performed up to the date of termination based upon the SVTVB's rates shown in Section 3 of this Agreement, except that:

- (1) In the event of termination by the City for SVTVB's default, City shall deduct from the amount due SVTVB the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due SVTVB are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another SVTVB(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to SVTVB hereunder, SVTVB shall pay City the full amount of such expense.

(C) The rights and remedy of the City and SVTVB provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

15. Compliance with Laws, Rules, and Regulations. Services performed by SVTVB pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

16. Exhibits Incorporated. All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

17. Independent Contractor. It is expressly understood and agreed by both parties that SVTVB, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the City. SVTVB expressly warrants not to represent, at any time or in any manner, that SVTVB is an employee or servant of the City.

18. Integration and Entire Agreement. This Agreement represents the entire understanding of City and SVTVB as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

19. Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, County of Monterey, and City of Salinas. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

20. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

21. Notices.

(A) Written notices to the City hereunder shall, until further notice by City, be addressed to:

Economic Development Manager
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

With a copy to:

City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

(B) Written notices to the SVTVB shall, until further notice by the SVTVB, be addressed to:

Craig Kaufman
Salinas Valley Tourism and Visitor's Bureau
8305 Prunedale North Road, #7
Salinas, CA 93907

(C) The execution of any such notices by the City Manager shall be effective as to SVTVB as if it were by resolution or order of the City Council, and SVTVB shall not question the authority of the City Manager to execute any such notice.

(D) All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

22. Nondiscrimination. During the performance of this Agreement, SVTVB shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. SVTVB shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

23. Conflict of Interest. SVTVB warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. SVTVB further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, SVTVB shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. SVTVB further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to SVTVB as the result of SVTVB's performance of the work or services pursuant to the terms of this Agreement.

24. Headings. The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

25. Attorneys' Fees. In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs

as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

26. Non-Exclusive Agreement. This Agreement is non-exclusive and both City and SVTVB expressly reserve the right to contract with other entities for the same or similar services.

27. Rights and Obligations Under Agreement. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

28. Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of SVTVB, its representatives, agents or subcontractors by federal, state or local law, SVTVB warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

29. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

30. Legal Representation. Each party affirms that it has been represented, if it so chose, by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

31. Joint Representation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

32. Warranty of Authority. Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

33. No Waiver of Rights. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

CITY OF SALINAS

Ray E. Corpuz, Jr.
City Manager

APPROVED AS TO FORM:

☐ Christopher A. Callihan, City Attorney, or
☐ Rhonda Combs, Assistant City Attorney

SVTVB

Craig Kaufman
Executive Director

Insurance Requirements

SVTVB shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the SVTVB, his agents, representatives, employees, or subcontractors. With respect to General Liability and Professional Liability, coverage should be maintained for a minimum of five (5) years after Agreement completion.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- (A) **Commercial General Liability** (“CGL”): Insurance Services Office Form (“ISO”) CG 00 01 covering CGL on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** 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.
- (B) **Automobile Liability**: ISO Form CA 0001 covering any auto, or if SVTVB has no owned autos, hired and non-owned, with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- (C) **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (D) **Professional Liability** (also known as Errors and Omissions) insurance appropriate to the work being performed, with limits no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate per policy period of one year.

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

OTHER INSURANCE PROVISIONS

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

Additional Insured Status

The City of Salinas, 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 SVTVB 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 SVTVB’s insurance (at least as broad as ISO Form CG 20 10, CG 11 85, or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this Agreement or the project described within this Agreement, the **SVTVB's insurance coverage shall be primary coverage** at least as broad as ISO Form CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the SVTVB's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

SVTVB hereby grants to City a waiver of any right to subrogation which any insurer of said SVTVB may acquire against the City by virtue of the payment of any loss under such insurance. SVTVB 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 City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Salinas for all work performed by the SVTVB, its employees, agents, and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared by SVTVB to and approved by the City. At the option of the City, SVTVB shall provide coverage to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the SVTVB shall provide evidence satisfactory to the City guaranteeing payment of losses and related investigations, claim administrations, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

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 City.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of this Agreement or the beginning of Agreement work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the Agreement of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the Agreement effective date, the SVTVB must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of Agreement work.
4. A copy of the claims reporting requirements must be submitted to the City for review.

Verification of Coverage

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

Subcontractors

SVTVB shall require and verify that all sub-SVTVBs and/or subcontractors maintain insurance meeting all the requirements stated herein, and SVTVB shall ensure that Entity is an additional insured on insurance required from such sub-SVTVBs and/or subcontractors.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Maintenance of Insurance

Maintenance of insurance by SVTVB as specified shall in no way be interpreted as relieving SVTVB of its indemnification obligations or any responsibility whatsoever and the SVTVB may carry, at its own expense, such additional insurance as it deems necessary.

Exhibit B

The SVTVB shall operate a California Welcome Center (“Welcome Center”) that is officially recognized by Visit California. To accomplish this, SVTVB shall perform the following tasks:

- A. The SVTVB shall continue to operate the California Welcome Center within the City of Salinas and shall be responsible for ensuring that said Center is operated in accordance with the requirements by Visit California. SVTVB shall employ staff of appropriate quantity and skill so that the Welcome Center is open to the public seven days per week for the duration of this contract. In the event that this staff member is unable to perform his/her duties, or in the event Welcome Center at any point becomes unable to remain open seven days per week, Welcome Center shall employ contract labor or take other means necessary to maintain uninterrupted seven-day-per-week operations. The requirement to remain open shall be waived for any holidays recognized by the City of Salinas.
- B. SVTVB shall provide monthly reports to the City of Salinas. These reports shall include information sufficient to enable the City to report regarding the success of the Welcome Center in increasing the number of overnight stays within the City of Salinas. This information shall include, but is not limited to, the number of visitors to the Center (on a daily basis), an itemized summary of marketing materials (whether presented electronically or on a physical medium such as paper or canvas) which provide information regarding potential lodging options within the City of Salinas, an itemized list of additional marketing materials used to attract visitors to the Welcome Center or the Salinas area, a summary (when available) of how many printed materials were provided to visitors, the number of visitors to SVTVB’s website, and any additional information which can be collected or derived from collected data using formulas or software commonly utilized and accepted throughout the industry.
- C. SVTVB shall meet and confer with the hotel operators within the City of Salinas, individually or collectively, on a reasonable basis, but not less than once per year, to discuss opportunities for the Welcome Center to increase the number of overnight stays within the City of Salinas.