

MARIPOSA COUNTY

Administration • 209-966-3222



RESOLUTION - ACTION REQUESTED 2015-457

MEETING: September 22, 2015

TO: The Board of Supervisors

FROM: Mary Hodson, CAO

RE: Mariposa Visitors' Center Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve a Two-Year Agreement with the Mariposa County Chamber of Commerce to Operate the Mariposa Visitors' Center in the Amount of \$331,442, and Authorize the Board of Supervisors Chair to Sign the Agreement.

At the request of the Mariposa County Chamber, this Agreement is for two years. The term is from October 1, 2015, through September 30, 2017. Included in the compensation is an increase effective January 1, 2016, to account for the scheduled increase in the minimum wage. Effective January 1, 2017, a cost-of-living adjustment is included tied to an increase in the consumer price index (CPI) with a maximum of 2%.

Because this Agreement overlaps fiscal years, the cost will be spread over three fiscal years as follows:

Fiscal Year 2015-16:	\$161,860
Fiscal Year 2016-17:	\$166,693
Fiscal Year 2017-18:	\$47,889

If a new Agreement is initiated beginning on October 1, 2017, then the Fiscal Year cost for 2017-18 will naturally increase, but listed above is the minimum of funding that the Board is committing if this Agreement is approved (unless of course the Agreement is terminated).

Also included in this Agreement are the same terms that the Board approved in last year's Agreement regarding allowing the Chamber to close the Visitors' Center for up to 10 days during the calendar year for holidays and/or for staff to attend training classes, as well as the 30-day termination clause.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On September 23, 2014, the Board adopted Resolution 14-499 approving a one-year Agreement with the Mariposa County Chamber of Commerce for the operation of the Mariposa Visitors' Center in the amount of \$159,000.

On October 14, 2014, the Board adopted Resolution 14-525 approving a First

Amendment to the Agreement adding language regarding allowing the Chamber to close the Visitors' Center for up to 10-days in a calendar year for holidays and training classes, and changing the termination notice to 30-days.

During the Fiscal Year 2015-16 Final Budget Hearings, the Board approved funding in the amount of \$161,860 in the Community Cultural budget for the operation of the Mariposa Visitors' Center.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the two-year agreement. The Board may modify the Agreement and change it to a one-year Agreement. The Board may direct staff to identify another contractor to operate the Visitors' Center, which could result in the Mariposa Visitors' Center being closed until a new contractor is identified, given that the existing Agreement ends on September 30, 2015.

FINANCIAL IMPACT:

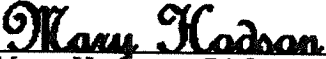
\$161,860 has been appropriated in the Fiscal Year 2015-16 General Fund - Community and Cultural budget for this purpose.

ATTACHMENTS:

2015 Chamber Contract (DOCX)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hoatson, CAO 9/15/2015

RESULT: ADOPTED [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: John Carrier, District V Supervisor

AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, John Carrier

EXCUSED: Kevin Cann

CONTRACT FOR SERVICES

RES. NO. 15-457

This Contract made this 22nd day of September 2015 between:

COUNTY: Mariposa County
P.O. Box 784
Mariposa, CA 95338

and

CONTRACTOR: Mariposa County Chamber of Commerce
P.O. Box 425
Mariposa, CA 95338

ARTICLE I. TERM OF CONTRACT

- 1.01** Contract Term: This Contract shall become effective on October 1, 2015 and shall terminate on September 30, 2017, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

- 2.01** Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venture or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.
- 2.02** Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

ARTICLE 3. SCOPE OF SERVICES

- 3.01** Specific Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the County Administrative Officer or their designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 3.02** Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.
- 3.03** Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

- 4.01** Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to services satisfactorily performed in the not to exceed amount of Three Hundred Thirty-One Thousand Four Hundred and Forty-Two Dollars (\$331,442.)
- 4.02** Payments: The above sum shall be paid as described in Exhibit 'B'.
- 4.03** Compensation Calculation: Compensation for October 2015 through December 2016 is as described in Exhibit 'B' noting that compensation is increased effective January 1, 2016 to reflect an increase in the minimum wage of one dollar per hour. Effective January 1, 2017, payments to contractor shall increase by the change in the California State Consumer Price Index as measured from November 2015 through November 2016 or 2% whichever is less.
- 4.04** Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.05** Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against

Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

- 5.01** Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County.
- 5.02** Workers' Compensation: During the term of this Contract Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.03** Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.04** General Liability and Automobile Insurance: During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insured under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insured will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

- 5.05** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 and 5.04 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.06** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
- 5.07** Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by Contractor without the prior written consent of County.
- 5.08** State and Federal Taxes: As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:
- a. County will not withhold FICA (Social Security) from Contractor's payments;
 - b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
 - c. County will not withhold state or federal income tax from payment to Contractor;
 - d. County will not make disability insurance contributions on behalf of Contractor;
 - e. County will not obtain workers' compensation insurance on behalf of Contractor.
- 5.09** Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.
- 5.10** Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period

required by law, from the date of final payment to the Contractor to this Contract. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

- 5.11** Financial Review: Contractor shall provide to the County a financial report of the Contractor's activities with an annually compiled and reviewed financial statement no later than January 15 annually.
- 5.12** Assignability of Contract: It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

- 6.01** Cooperation of County: County agrees to comply with all reasonable requests of Contractor (to provide access to all documents as permitted by law) necessary to the performance of Contractor's duties under this Contract.
- 6.02** Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION ARTICLE OF CONTRACT

- 7.01** Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
- 7.02** Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County's option, may terminate this Contract by giving written notification to Contractor.
- 7.03** Termination for Convenience of County: County may terminate this Contract at any time by providing a 30-day notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated, and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

ARTICLE 8. GENERAL PROVISIONS

- 8.01** Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02** Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged.
- 8.03** Partial Invalidity: If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04** Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.
- 8.05** Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06** Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.
- 8.07** Governing Law: This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

CONTRACTOR:

COUNTY:

Mariposa County Chamber of Commerce

County of Mariposa

By: Raren E. Cutter 9-17-15
(signature) (date)

By: Merlin Jones 9-22-15
Merlin Jones, Chairman (date)

Raren E. Cutter
(printed name)

APPROVED AS TO FORM:

Steven W. Dahlem
STEVEN W. DAHLEM, County Counsel

SCOPE OF SERVICES
Exhibit A

Scope of services and duties to be performed by the Mariposa County Chamber of Commerce to operate the Mariposa County Visitors' Center located in the town of Mariposa. Chamber will provide the following:

1. Staffing of the Mariposa Visitors' Center to provide information to visitors coordinated with Mariposa County per the following schedule:

Service Hours:

April through October -	10 hours per day Monday through Sunday (9 AM – 7 PM) 1.5 – 2.5 staff per day based on traffic flow
November and March -	9 hours per day 7 days a week (to be determined) 1.0 – 1.5 staff per day based on traffic flow
December through February -	8 hours per day 6 days a week (to be determined) 1.0– 1.5 staff per day based on traffic flow

Note: The Mariposa Visitors' Center will be closed for holidays, training and staff development no more than ten (10) days during the calendar year.

2. Administrative support services of the Mariposa Visitors' Center.
3. Pay all operational costs of the Mariposa Visitors' Center including but not limited to: insurance, staffing, rent, utilities, telephone, and materials.
4. Answer 800# visitor information lines.
5. Provide visitor information material and assist with reservations.
6. Tracking and reporting of visitor statistics monthly on forms provided by the Chamber of Commerce.
7. Conduct visitor survey(s) as needed.
8. Storage and display of visitor informational brochures and promotional materials with the understanding that materials are not reviewed, approved or authorized by the County.
9. Provide reciprocal links in Internet site(s) at no charge.
10. At the contractor's option, conduct Mariposa County courthouse and jail tours.
11. Support Yosemite Area Regional Transportation System (YARTS) in general and specifically by selling/providing YARTS tickets.

Exhibit B			
Compensation Schedule			
<i>Compensation</i>	<i>2015</i>	<i>2016</i>	<i>2017*</i>
<i>January</i>		\$10,275	\$10,481
<i>February</i>		\$10,275	\$10,481
<i>March</i>		\$12,360	\$12,607
<i>April</i>		\$15,650	\$15,963
<i>May</i>		\$15,650	\$15,963
<i>June</i>		\$15,650	\$15,963
<i>July</i>		\$15,650	\$15,963
<i>August</i>		\$15,650	\$15,963
<i>September</i>		\$15,650	\$15,963
<i>October</i>	\$15,000	\$15,650	
<i>November</i>	\$12,000	\$12,360	
<i>December</i>	\$10,000	\$10,275	

* Assume 2%

Mariposa County Chamber of Commerce
Visitors' Center Daily Log

Fiscal Year 2014-2015

Month	Visitors	Reservations	In Calls	Out Calls
Jul-14	9382	679	471	425
Aug-14	7381	627	455	451
Sep-14	6146	415	420	392
Oct-14	4360	362	373	308
Nov-14	2030	202	187	327
Dec-14	1903	153	215	150
Jan-15	1702	138	245	209
Feb-15	1438	156	279	123
Mar-15	2931	227	379	248
Apr-15	4001	339	286	271
May-15	4874	416	274	394
Jun-15	4556	315	266	202
TOTAL	50704	4029	3850	3500