

DEPARTMENT: Administration BY: Greg Iturria

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No\_X\_)

Resolution authorizing the Chairman to Sign an Agreement with the Mariposa County Chamber of Commerce for the operation of the Mariposa Visitor Center and the Coulterville Visitor Center.

Staff report and draft agreement are attached.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Annually, the Board has contracted with the Chamber of Commerce for the operation of the visitor centers.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- 1) Approve
- 2) Provide alternative direction

**COSTS:** (X) Not Applicable

A. Budgeted current FY \$ \_\_\_\_\_

B. Total anticipated costs \$ \_\_\_\_\_

C. Required additional funding \$ \_\_\_\_\_

D. Internal transfers \$ \_\_\_\_\_

**SOURCE:** ( ) 4/5ths Vote Required

A. Unanticipated revenues \$ \_\_\_\_\_

B. Reserve for contingencies \$ \_\_\_\_\_

C. Source description: \_\_\_\_\_

Balance in Reserve for Contingencies, if approved: \$ \_\_\_\_\_

**SPECIAL INSTRUCTIONS:**  
List the attachments and number the pages consecutively:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CLERK'S USE ONLY:**

Res. No.: 51-193 Ord. No. \_\_\_\_\_

Vote - Ayes: 5 Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved  Denied

Minute Order Attached  No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_

ATTEST: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

By: \_\_\_\_\_  
Deputy

**COUNTY ADMINISTRATIVE OFFICER'S RECOMMENDATION:**  
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: \_\_\_\_\_

C.A.O. Initials: [Signature]

# Mariposa County Board of Supervisors



**GREGORY G. ITURRIA**  
County Administrative Officer

**MARGIE WILLIAMS**  
Clerk of the Board

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District 1.....PATTI A. REILLY  
District 2.....DOUG BALMAIN  
District 3.....ROBERT C. STEWART  
District 4.....GARRY R. PARKER  
District 5.....BOB PICKARD

Date: June 26, 2001

To: Board of Supervisors

From: Greg Iturria, County Administrative Officer

Re: Chamber of Commerce Agreement to Operate Visitor Centers

## Recommendation

That the Board of Supervisors authorize the Chair to sign the attached agreement with the Mariposa County Chamber of Commerce for the operation of the Mariposa Visitor Center and the Coulterville Visitor Center.

## Background

The Mariposa County Chamber of Commerce has successfully operated the two County visitor centers and desires to continue providing this service. The current agreement is for the period July 1, 2000 to June 30, 2001. Past contract amounts are as follows:

Fiscal Year 1990-91	\$110,000
Fiscal Year 1991-92	\$105,000
Fiscal Year 1992-93	\$114,760
Fiscal Year 1993-94	\$112,000
Fiscal Year 1994-95	\$106,731
Fiscal Year 1995-96	\$85,721
Fiscal Year 1996-97	\$95,880
Fiscal Year 1997-98	\$95,880
Fiscal Year 1998-99	\$95,880
Fiscal Year 1999-00	\$97,730
Fiscal Year 2000-01	\$96,801

The Chamber of Commerce has met with County staff during the spring of each year to discuss the cost of operating the visitor centers and review funding requests for the following fiscal year. Often the Chamber of Commerce doesn't know what level of funding will be made available to them until three months into

the fiscal year. Last year the Board of Supervisors recognized the dilemma and suggested that the Chamber receive some form of a cost of living increase each year above the prior year funding level.

### Discussion

Over the past few months the Chamber has communicated to staff several new and extraordinary expenses that they must incur in order to continue to provide the services. Particularly, 1) the increasing minimum wage is pressuring an increase in wages for visitor center staff in order to retain and attract employees for those positions, 2) the volunteer Executive Director that administers the contract on behalf of the Chamber is retiring and being replaced by a paid Executive Director, and 3) the Chamber can no longer defer the replacement of office equipment.

In order to address these legitimate Chamber concerns, and keep with the Board's intent to establish a funding baseline with annual COLAs, staff is recommending a contract with the following provisions:

1. Four-year contract for services. However, County reserves the option to provide 180 days notice for termination.
2. Initial funding will be \$115,880 and will be adjusted annually beginning in the second year of the contract based on a CPI not to exceed 5%.
3. County will negotiate in good faith to consider additional funding for unavoidable and extraordinary expenses that may arise in providing the agreed upon services.
4. The Chamber will operate the Mariposa and Coulterville visitor centers at the same service levels performed this fiscal year. They will continue to support YARTS in general and specifically by selling/providing YARTS tickets.

### Fiscal Impact

The County General Fund will expend at least \$115,880 per year for the next four years with annual increases no greater than 5%, unless otherwise negotiated. Operation of the visitor centers probably increases the number of return visitors to Mariposa County thus infusing revenue into the local economy, including the County General Fund. However, it is not possible to measure the return on this investment.

## **AGREEMENT**

### **VISITOR INFORMATION CENTERS / SERVICES**

**THIS AGREEMENT** is entered into on the most recent date of execution below by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "**COUNTY**", and the Mariposa County Chamber of Commerce, hereinafter referred to as "**CONTRACTOR**", for services to be provided to **COUNTY**.

#### **WITNESSETH:**

**WHEREAS, COUNTY** is in need of specialized services to be provided to **COUNTY**,  
and

**WHEREAS, CONTRACTOR** is qualified and desires to provide specialized services to **COUNTY**;

**NOW, THEREFORE**, in consideration of the sums to be paid hereunder and the mutual covenants and conditions hereinafter contained, the **PARTIES** hereto agree as follows:

#### **ARTICLE 1. TERM OF CONTRACT**

**Section 1.01.** This **AGREEMENT** shall become effective on July 1, 2001 and shall terminate on June 30, 2005 unless terminated in accordance with the provisions of this **AGREEMENT**.

#### **ARTICLE 2. INDEPENDENT CONTRACTORS STATUS**

**Section 2.01.** It is the express intention of the **PARTIES** that **CONTRACTOR** is an independent **CONTRACTOR** and not an employee, agent, joint venturer or partner of **COUNTY**. Nothing in this **AGREEMENT** shall be interpreted or construed as creating or establishing the relationship of employer and employee between **COUNTY** and **CONTRACTOR** or any employee or agent of **CONTRACTOR**. Both **PARTIES** acknowledge that **CONTRACTOR** is not an employee for state or federal tax purposes. **CONTRACTOR** shall retain the right to perform services for others during the term of this **AGREEMENT**.

#### **ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR**

**Section 3.01.** **CONTRACTOR** agrees to perform the services as described on Exhibit "A" attached hereto and by this reference incorporated herein.

### Method for Performing Services

**Section 3.02.** CONTRACTOR will determine the method, details, and means of performing the above-described services. COUNTY shall not have the right to, and shall not control the manner or determine the method of accomplishing CONTRACTOR'S services, except as specified on Exhibit "A".

### Employment of Assistants

**Section 3.03.** CONTRACTOR may, at CONTRACTOR'S own expense, employ such assistants, as CONTRACTOR deems necessary to perform the services required of CONTRACTOR by this AGREEMENT. COUNTY may not control, direct, or supervise CONTRACTOR'S assistant employees in the performance of those services. CONTRACTOR assumes full and sole responsibility for the payment of all compensation and expenses of these assistants for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

## ARTICLE 4. COMPENSATION

**Section 4.01.** In consideration for the services to be performed by CONTRACTOR, COUNTY agrees to pay CONTRACTOR:

The sum of **One Hundred Fifteen Thousand Eight Hundred Eighty Dollars (\$115,880.00)** for services as described above for the first year of this AGREEMENT, commencing July 1, 2001 and ending June 30, 2002. The total sum to be paid to CONTRACTOR pursuant to this AGREEMENT includes all labor, materials, travel and other expenses to be incurred by CONTRACTOR in the performance of the services described herein.

### Payment Schedule

**Section 4.02.** The above annual sum shall be paid as follows:

The sum of **Eleven Thousand Six Hundred Eighty-Three Dollars (\$11,683.00)** per month for the months of July, August, September, and October of each year of this AGREEMENT (adjusted for the second, third and fourth years as described below), and the sum of **Eight Thousand Six Hundred Forty-Three Dollars and 50/100 (\$8,643.50)** per month for the months of November, December, January, February, March, April, May, and June of each year of this AGREEMENT (adjusted for the second, third, and fourth years as described below).

### Annual Adjustment

**Section 4.03.** The compensation paid hereunder shall be adjusted annually commencing on July 1, 2002, and July 1 of each year of this AGREEMENT thereafter, and shall be increased, but not decreased, by a percentage equal to the prior year's percentage increase in the San Francisco/Oakland/San Jose Consumer Price Index for All Urban Consumers (1982-1984=100) as published by the State of California, Department of Industrial Relations, Division of Labor Statistics and Research, (the "INDEX"), subject to a maximum annual

increase of 5%. For purposes of computing such increases, the prior year's percentage increase in the **INDEX** shall be calculated by dividing the **INDEX** for the July prior to the date of the increase by the **INDEX** for the previous July. If this calculation shows that the **INDEX** has remained unchanged or has declined, the compensation rate shall remain unchanged. If the described **INDEX** shall no longer be published, another generally recognized as authoritative shall be substituted by agreement of the **PARTIES**.

The annual increase, if any, shall be applied to the monthly payments as described in Section 4.02 above. By way of example, if the annual adjustment requires a four percent (4%) increase, each monthly payment as described in Section 4.02 will increase by four percent (4%) from the previous year's monthly payments.

#### Additional Compensation

**Section 4.04.** **COUNTY** shall negotiate in good faith with **CONTRACTOR** at any time during the term of this **AGREEMENT** to increase the compensation hereunder when circumstances beyond the control of **CONTRACTOR** cause an increase in the cost to **CONTRACTOR** of providing the services hereunder. In the event the Parties are unable to reach agreement for additional compensation **CONTRACTOR** shall have the right to terminate this **AGREEMENT** by giving ninety (90) days written notice. This termination provision shall only apply to circumstances described in this Section 4.04.

**CONTRACTOR** shall not be obligated to provide enhanced services, which are not described in Exhibit "A" without additional equitable compensation for the services.

#### Expenses

**Section 4.05.** **CONTRACTOR** shall be responsible for all costs and expenses incident to the performance of services for **COUNTY**, including but not limited to, employee wages, all costs of equipment provided by **CONTRACTOR**, 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**

#### Tools and Instrumentalities

**Section 5.01.** **CONTRACTOR** will supply all equipment, office supplies, tools and instrumentalities, required to perform the services under this **AGREEMENT**.

#### Indemnification of Liability

**Section 5.02.** **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 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 Five Hundred Thousand Dollars (\$500,000.00) to cover any such claim.

#### Workers' Compensation

**Section 5.03.** **CONTRACTOR** shall provide Workers' Compensation insurance as required by the State of California for all services provided hereunder.

#### Assignment

**Section 5.05.** **CONTRACTOR** understands that **COUNTY** retained the services of **CONTRACTOR** because of **CONTRACTOR'S** reputation and expertise in providing the type of services to be rendered herein, and, therefore, neither this **AGREEMENT** nor any duties or obligations under this **AGREEMENT** may be assigned by **CONTRACTOR** without the prior written consent of **COUNTY**.

#### State and Federal Taxes

**Section 5.06.** As **CONTRACTOR** is not **COUNTY'S** employee, **CONTRACTOR** is responsible for paying all required state and federal taxes. In particular:

**COUNTY** will not withhold FICA (Social Security) from **CONTRACTOR'S** payment;  
**COUNTY** will not make state or federal unemployment insurance contributions on behalf of **CONTRACTOR**;

**COUNTY** will not withhold state or federal unemployment insurance contributions on behalf of **CONTRACTOR**;

**COUNTY** will not make disability insurance contributions on behalf of **CONTRACTOR**;

**COUNTY** will not obtain Workers' Compensation insurance on behalf of **CONTRACTOR**.

### **ARTICLE 6. OBLIGATIONS OF COUNTY**

#### Cooperation of COUNTY

**Section 6.01.** **COUNTY** agrees to comply with all reasonable requests of **CONTRACTOR**, and provide access to all documents reasonably necessary to the performance of **CONTRACTOR'S** duties under this **AGREEMENT**.

**ARTICLE 7. TERMINATION OF AGREEMENT**

**Termination on Occurrence of Stated Events**

**Section 7.01.** This AGREEMENT shall terminate at the discretion of COUNTY upon the bankruptcy or insolvency of CONTRACTOR.

**Termination by COUNTY for Default of CONTRACTOR**

**Section 7.02.** Should CONTRACTOR default in the performance of this AGREEMENT or materially breach any of its provisions, COUNTY, at COUNTY'S option, may terminate this AGREEMENT by giving written notification to CONTRACTOR.

**Section 7.03.** Notwithstanding Section 7.02, this AGREEMENT may be terminated by COUNTY by giving CONTRACTOR one hundred eighty (180) days written notice with or without fault.

**ARTICLE 8. GENERAL PROVISIONS**

**Notices**

**Section 8.01.** 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 prepared with return receipt requested. Mailed notices shall be addressed to the PARTIES at the addresses appearing below, 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.

**COUNTY:** County Administrative Officer  
Mariposa County Administration  
P.O. Box 784  
Mariposa, California 95338

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

**Entire Agreement of the PARTIES**

**Section 8.02.** This AGREEMENT supersedes any and all agreements, 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 agreements between the PARTIES with respect to the rendering of such services in any manner whatsoever. Each PARTY to this AGREEMENT acknowledges that no representations, inducements, promises, or agreements, 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 agreement, statement, or



promise not contained in this AGREEMENT shall be valid or binding. Any modification of this AGREEMENT will be effective only if it is in writing signed by the PARTY to be charged.

Partial Invalidity

**Section 8.03.** If any provision in this AGREEMENT is held by a court of 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.

Attorney's Fees

**Section 8.04.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this AGREEMENT, 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.

Governing Law

**Section 8.05.** This AGREEMENT will be governed by and construed in accordance with the laws of the State of California.

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

**COUNTY:**

**CONTRACTOR:**

Doug Balmain  
DOUG BALMAIN, Chairman  
Mariposa County Board of Supervisors

\_\_\_\_\_  
JOY SCHULTZ, President  
Mariposa County Chamber of Commerce

Date: 6-26-01

Date: \_\_\_\_\_

Chamber of Commerce Tax Identification  
# \_\_\_\_\_

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

Jeffrey G. Green  
JEFFREY G. GREEN, County Counsel

Scope of services and duties to be performed by the Mariposa County Chamber of Commerce to operate, and in connection with the operation of the Mariposa County Visitor Information Centers in Mariposa and Coulterville, Chamber will provide the following:

1. Staffing of the visitor centers and provide information to visitors coordinated with the Mariposa County Visitors Bureau per the following schedule. Scheduled hours may be changed at the request or approval of the Visitors Bureau Director.

### **Service Hours**

#### **Mariposa Visitor Center**

22 weeks @ 13 hours for Monday – Saturday

@ 8 hours for Sunday

30 weeks @ 8 hours for Monday – Saturday

@ 0 hours for Sunday

#### **Coulterville Visitor Center**

22 weeks @ 8 hours for Wednesday – Monday

30 weeks @ 7.5 hours for Thursday – Sunday

2. Administrative support services of the visitor centers.
3. Pay all operational costs of visitor centers including but not limited to: insurance, staffing, rent, utilities, phone (Coulterville), and materials.
4. Answer 800# visitor information lines and provides visitor information and assist with reservations.
5. Tracking and reporting of visitor statistics monthly on forms provided by Visitors Bureau.
6. Conduct visitor survey(s) as needed.
7. Storage and display of Visitors Bureau brochures and promotional materials (does not include more than 2 dozen boxes of vacation planners).
8. Include Visitors Bureau in training of visitor center staff as appropriate.
9. Utilize fulfillment provided by Visitors Bureau to reply to inquiries for visitor information received by the visitor centers. This includes distribution of vacation planners to visitors in the centers.
10. Provide reciprocal links in internet site(s) at no charge.
11. Support YARTS in general and specifically by selling/providing YARTS tickets.
12. If necessary, the Chamber of Commerce may use the Visitors Bureau copier at a reimbursement rate of \$.0263 per copy.