

**AGREEMENT BETWEEN CITY OF BEND
AND BEND CONVENTION AND VISITORS BUREAU, INC.,
DOING BUSINESS AS VISIT BEND, FOR TOURISM PROMOTION
SERVICES**

This agreement is between the City of Bend, an Oregon municipal corporation (“City”),¹ and Bend Convention And Visitors Bureau, Inc., doing business as Visit Bend (“Contractor”), an Oregon nonprofit corporation. This Agreement supersedes all prior agreements between the City and Contractor.

RECITALS

- A. The City desires to enter this Agreement with Contractor for tourism promotion services for the City.
- B. Contractor is willing to provide tourism promotion services for the City. The City is willing to compensate Contractor for tourism promotion services with a portion of tourism-related taxes levied throughout the City.
- C. The City believes that Contractor is qualified and able to provide the tourism promotion services.

TERMS OF AGREEMENT

- 1. Definitions. “Tourism promotion” means any of the following activities: (a) advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists; (b) conducting strategic planning and research necessary to stimulate future tourism development; (c) operating tourism promotion agencies; and (d) marketing special events and festivals designed to attract tourists. ORS 320.300(7). “Tourism” means economic activity resulting from tourists. ORS 320.300(6). “Tourist” means a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person’s community of residence, and that trip: (a) requires the person to travel more than 50 miles from the community of residence; or (b) includes an overnight stay. ORS 320.300(10).
- 2. Contractor’s Services. In exchange for the payment provided in Section 3, Contractor shall provide the following tourism promotion services to the City:
 - a. Visitor Information Center. Contractor shall manage and administer a Visitor Information Center within Bend. Contractor shall provide all

¹ In this Agreement, “City” refers to the government of the City of Bend, and “Bend” refers to the geographic area.

necessary staff, materials and services for the functioning of the Visitor Information Center. The Visitor Information Center shall be open to provide information and materials for walk-in visitors during the following hours subject to seasonal adjustments based on demand:
Mon-Fri, 9 AM to 5 PM and Sat–Sun, 10 AM to 4 PM.

The Visitor Information Center shall also respond to requests for tourism information sent by mail or electronic means. Contractor shall develop informational programs and shall coordinate with other agencies and entities to develop and provide tourism information regarding Bend.

- b. Tourism Promotion Activities. Contractor shall provide functions, literature, advertising, staff, supplies, equipment and support to promote Bend as a destination for tourists and visitors. Contractor shall develop, arrange for printing, and distribute literature to promote Bend to visitors and identify and conduct activities and programs designed to promote Bend for tourists and visitors. Contractor shall coordinate its activities, as appropriate, with other organizations such as the Oregon Travel Council and other visitor promotion entities. The additional revenues approved by the voters in 2013 shall be used to expand marketing and advertising Bend as a destination to select markets, and to promote winter and shoulder season tourism in Bend, as well as provide for other tourism promotion efforts.
- c. Administrative and Management Functions. Contractor shall provide day-to-day management activities including planning, and acquisition of services, equipment, supplies and facilities to fulfill the Annual Business and Marketing Plan (the “Business Plan”) for the Visitor Information Center and Tourism Promotion Activities. Contractor shall be responsible for maintaining capable and competent staff, including management staff. Contractor’s Executive Director or designee shall attend any City Council and/or City Committee meetings as directed by City Council to provide updates, information or other data on Visit Bend plans and services.

3. Business Plan. Contractor shall submit an annual Business Plan and Budget to the City Council, which will first be reviewed and recommended to Council by the Bend Economic Development Advisory Board (BEDAB), by the first council meeting of May of each year. The Business Plan shall contain a review of the previous year’s performance and a detailed description of the proposed services to be provided in the next fiscal year, as well as a proposed budget for the next fiscal year. The Business Plan shall identify activities and performance goals. The City may provide general input regarding the funding of various services or programs, which Contractor will consider in its use of City funds. Contractor shall remain fully responsible for the implementation

of services and programs and the City shall not control the day-to-day activities and operation of Visit Bend and its employees and agents.

The City shall review the Business Plan when received and, after a public hearing by the City Council, must approve the Plan before it authorizes continued funding for the next fiscal year. Contractor shall expend funds received from the City under this Agreement only as authorized by the Business Plan.

- a. Contractor's budget shall be prepared assuming a total budget for services provided by this Agreement that represents the statutorily approved limit of 30% of the proceeds from a Room Tax rate of 9% and 70% of the proceeds from any amount in excess of a 9% rate, less city overhead (administrative and audit expenses.) Effective June 1, 2014, an additional 1% was collected, and on June 1, 2015 an additional 0.4% will be collected, so the total budget may assume this additional amount of Room Tax less city overhead.
- b. The annual budget shall contain a reserve fund in an amount of at least three months of total operating revenues as defined by Contractor's adopted fiscal policies. The reserve fund may be used in the case of actual revenues being less than forecast and in support of activities included in the approved Business Plan. In no case will expenditures exceed actual funds payable under this Agreement. If actual collections are lower than projected, payment is due only up to the percentage owed of the actual amount collected. However, nothing in this section precludes Contractor using funds from sources other than the City in Contractor's complete and total discretion.
- c. Contractor will also prepare 2-4 progress reports each year on the Business Plan in a form and number acceptable to the City. The entire BEDAB board shall review the progress report and make any recommendations for changes in the Business Plan, if necessary, consistent with Meetings procedures in the Bend Code, Chapter 1.20.
- d. If actual collections exceed the budget approved amount by 10% or more, before additional funds are provided, Contractor shall submit a revised business plan to the City describing how the additional funds will be spent on tourism promotion activities. At the City's request, the additional funding request will first be reviewed by the BEDAB.

Contractor shall notify City in writing of any significant change made to the Business Plan. Contractor shall provide City a written report in September and January of each year on the progress being made on the Business Plan.

4. City Funding. City agrees to provide proceeds from the City's Room Tax to Contractor for the services provided under this Agreement. The City will provide up to 30% of the proceeds from a tax rate of 9% and 70% of the proceeds from any tax rate in excess of 9% (10% on June 1, 2014 and 10.4% on June 1, 2015), less the City's administrative costs (audit and overhead costs). The amount paid monthly to Contractor shall be based on City projections as to the amount of revenue forecasted to be received by Room Tax receipts adjusted by the prior month's budget to actual variance, subject to 3(d) above.

5. Administrative Costs. Contractor's administrative and management costs, including but not limited to personnel, internal budgeting and accounting, purchasing, insurance, maintenance, supervision, legal, printing and any other costs shall be at the cost and discretion of Contractor.

6. Assets. Contractor is an independent entity and shall be responsible for acquiring real and personal property related to provision of services under this agreement. Contractor shall own all real and personal property acquired by it. On termination of this Agreement, Contractor shall transfer any intellectual property or promotional materials associated with the provision of services under this Agreement to City.

7. Risk of Loss and Insurance.

- a. Contractor bears the risk of loss of all its property described in Section 5. Contractor, at Contractor's own expense, shall procure and maintain in good standing, liability insurance to protect Contractor from claims that may arise out of result from the services provided under this Agreement. Prior to execution of this Agreement, Contractor shall provide proof of insurance required by this Agreement. Contractor shall obtain and maintain commercial general liability insurance in an amount per occurrence at least equal to the City's tort liability limits under the Oregon Tort Claims Act and \$3,000,000 aggregated and shall name the City, its officers, agents and employees as additional insureds.
- b. Contractor, and all subcontractors, shall maintain in full force and effect Worker's Compensation Insurance and Employer Liability Insurance in compliance with Oregon law.
- c. Contractor shall be responsible for all deductibles, self-insured retentions and/or self-insurance for the insurance required under this section. Contractor shall notify the City 30 days prior to any material change in the Contractor's insurance. The Contractor is responsible for insurance on Contractor's property.

8. Records and Accounting. Contractor shall maintain records and accounts that will allow the City to assure a proper accounting for all funds paid for the performance of this Agreement. Within 72 hours of a written request by the City, Contractor shall make records relating to income and expenditures available for review and/or audit by the City. City shall have the right during the term of this Agreement or within 180 days after expiration or termination of this Agreement to audit Contractor's records for the period of three years prior to the audit. The audits may be undertaken by a qualified person or entity selected by the City. Contractor agrees that, semi-annually, it will provide financial records from its accountants relating to the preceding six months to the City. The "Financial Records" shall include, but not be limited to, a balance sheet and income and expense reports. Contractor shall maintain Financial Records for at least six years after the expiration of this Agreement.

9. Term. This Agreement shall be effective when signed by both parties. It shall remain in effect for three (3) three years unless terminated for default or material breach as set forth below.

Either party may terminate this Agreement in the event of a default or material breach by providing written notice to the other party setting forth the items in which the other party is in non-compliance with this Agreement. The non-complying party shall have 30 days after receipt of a notice of non-compliance to cure the non-compliance. If the non-compliance cannot be corrected within 30 days, corrective action must commence within 30 days and proceed with due diligence until completed. This Agreement may be terminated if the non-complying party does not initiate compliance within 30 days of the notice or at any time stops diligent efforts to cure the non-compliance.

10. Equal Opportunity. Contractor agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, ancestry or national origin sexual orientation or gender identity and shall take such affirmative action including but not limited to hiring, promotion or demotion, recruitment, layoff or Termination, salary and selection for training as is necessary to ensure that all employees and applicants are treated equally as to the aforementioned bases. Contractor and its employees shall not, in the performance of this Agreement, discriminate against any customer, potential customer, Visitor Center patron or other person on the basis of race, color, sex, religion, ancestry, or national origin, sexual orientation or gender identity and shall provide services, facilities and other privilege to all such persons equally.

11. Contractor Indemnification. Contractor shall defend, protect, indemnify and hold harmless the City, its officers, agents and employees from and against any and all claims, loss, damages, injury or liability including claims for misapplication of contributions or other funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts or processes protected by intellectual property rights and liens of workmen and material men, howsoever caused, resulting directly or indirectly from the performance of this

Agreement by Contractor, unless caused by the negligence or willful misconduct of the City. Contractor is not an officer, employee or agent of the City under ORS 30.285 or ORS 30.287.

12. Licensing and Taxes. Contractor shall be responsible for the acquisition and maintenance of all licenses and permits to carry on Contractor's business.

13. Independent Contractor. Contractor is an independent contractor, holding itself out to the general public as an independent contractor. The parties intend that an independent contractor relationship will be created by this Agreement. The City is interested only on the results to be achieved; all conduct and control of the work will lie with Contractor. Contractor is not to be considered an agent or employee of the City for any purpose, and the employees of Contractor are neither employees of the City nor entitled to any of the benefits that the City provides for its employees.

14. No Third Party Beneficiaries. The City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

15. Limitations. As provided in Section 13, Contractor is an independent contractor in the performance of this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance and worker's compensation. As such, Contractor shall have no authorization, express or implied, to bind the City to any agreement, settlement, liability or understanding, whatsoever, and agrees not to perform any acts as agent for the City.

16. Notice. Any notice or notices provided for this Agreement or by law to be given or served upon either party shall be given or served by (1) personal service, (2) certified mail, return receipt requested, postage prepaid or (3) by email or facsimile followed by certified mailing of the original and addressed to:

City of Bend
City Manager
P. O Box 431
Bend, Oregon 97709

Visit Bend
President/CEO
750 NW Lava Road, Suite 160
Bend, Oregon 97701

17. Assignment. Neither party may assign, subcontract, or otherwise transfer any rights and responsibilities under this Agreement except upon the written consent of the other party. If any assignment is made both the assigning party and assignee shall be bound by the terms of this Agreement. The City may terminate the Agreement if transferred or assigned without the prior written consent of the City.

18. Amendments. This Agreement may be amended by written agreement of both parties.

19. Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon both as to the interpretation and performance, and the venue shall be in Deschutes County.

20. Waiver. The City's failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of the City's right to performance in the future and shall not operate as a waiver of the City's right to enforce any other provision of this Agreement.

The persons signing below represent and warrant that they have the authority to sign this Agreement on behalf of the entity they are signing for:

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| <p>CITY OF BEND, OREGON</p> <p>By: _____ City Manager</p> <p>Date: _____</p> <p>Approved as to Form:</p> <p>By: _____ Mary A. Winters, City Attorney</p> <p>Date: _____</p> | <p>INDEPENDENT CONTRACTOR: BEND CONVENTION AND VISITORS BUREAU, INC. DBA VISIT BEND</p> <p>By: _____ Board Chair</p> <p>Date: _____</p> <p>By: _____ Doug LaPlaca, Executive Director</p> <p>Date: _____</p> |
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