

## **TOURISM BUSINESS IMPROVEMENT DISTRICT MEETING AGENDA**

Thursday, October 9, 2014 @ 9:00 A.M.  
Vets Hall – 209 Surf Street | Morro Bay, CA 93442

- I. CALL TO ORDER
  - a. Remote Call-in: John Meyers, 1394 Sam Mateo, Palm Springs, CA 92264, 760-832-6217
- II. PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Board on MB Tourism Bureau business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Board at this time.
- III. APPROVAL OF MINUTES
- IV. CONSENT AGENDA
  - a. ELECTION OF CHAIR & VICE CHAIR
  - b. ADOPTION OF MORRO BAY TOURISM BUREAU BUDGET  
*Release of funds to the Morro Bay Tourism Bureau*
  - c. RENEWAL OF CITY CONTRACTS WITH MBTB
    - i. Renewal of City Contract (as provided) with MBTB for assessment funds (as adopted by City Council)
    - ii. Renewal of City Contract (as provided) with MBTB for Visitor Center services (as adopted by City Council)
- V. REVIEW OF TRANSIENT OCCUPANCY TAX (TOT) – John Meyers
- VI. ADOPT ANNUAL MARKETING REPORT & PLAN AS PROVIDED BY MBTB
- VII. DECLARATION OF FUTURE AGENDA ITEMS
- VIII. BOARD ANNOUNCEMENTS
- IX. ADJOURNMENT

### **MISSION STATEMENT**

The purpose of the Morro Bay Tourism Bureau is to promote and increase tourism in the city of Morro Bay by improving and strengthening the condition of the Tourism Business Environment. The objective shall be accomplished through the development and operation of a Tourism Improvement District and other marketing, branding and promotional programs and initiatives.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (805) 772-6205. Notification 24 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting.

**MORRO BAY TOURISM BUREAU  
ANNUAL STAKEHOLDERS MEETING  
Thursday, April 10, 2014 @ 10:00 A.M.  
Vets Hall – 209 Surf Street  
Morro Bay, CA 93442**

MEMBERS PRESENT: JOAN SOLU, NICK MENDOZA, JAYNE BEHMAN, ALEX AMINI,  
MICHELE JACUEZ, JOHN MEYERS, KAREN BIAGGINI

STAFF PRESENT: PETER WILLIAMSON, BRENT HAUGEN

OTHERS PRESENT: JOHN SORGENFREI, STACIE JACOBS, KACI KNIGHTON, JOHN SOLU,  
RICK TURTON, CHRISTINE LASHNER, JUDY SALAMACHA, TOM CLARKSWELL, SUSAN  
STEWART, JEFF ECKLES, AMY CHRISTEY, NANCY MCKARNEY, ED KROVTIZ, JAMIE IRONS,  
JOHN HEADDING, NOAH SMUKLER, TIFFANY PORTER, CHRISTINE JOHNSON, MATT  
CLEVINGER, COLLEEN ACETO, NIKKI HARTZELL, SUMMER, RICKY, VALERIE SEYMOUR,  
KEN MACMILLAN, AMIT PATEL

**I. CALL TO ORDER**

Member Jacquez called the meeting to order at 10:06 a.m. Member Jacquez thanked everyone for coming out for the annual stakeholders meeting.

**II. PUBLIC COMMENT PERIOD**

**Members of the audience wishing to address the Board on MB Tourism Bureau business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Board at this time.**

Member Jacquez did not open for public comment.

**III. BOARD ANNOUNCEMENTS**

A) Member Jacquez updated the stakeholders on major 2014 accomplishments. Next, Member Jacquez listed and explained 2015 objectives and introduced the new DOT.

B) Brent Huagen, Director of Tourism, introduced himself and delivered a brief career history. He also explained the importance of gathering feedback from all stakeholders and invited all to stop by his office.

**IV. COMMENTS FROM CITY COUNCIL  
(Christine Johnson)**

Christine Johnson told the board what a pleasure it was to volunteer as the City Liaison. Johnson explained how the advisory board was working long volunteer hours to craft Morro Bay as a community. Johnson told everyone that the City contributed 26% to the MBTB efforts, making every Morro Bay citizen a stakeholder. Johnson pointed out three points Member Jacquez had made and explained how they'd benefited the City of Morro Bay. Johnson expressed that social marketing was an exciting activity that the community could tie into. Johnson told the audience that morrobay.org was a great resource to find Morro Bay on goings. Johnson thanked Karin Moss for launching the MBTB during 2013.

Christine Johnson listed these recommendations from Carl Ribaud: work together, measure what you do, and continue to improve over the long term. Johnson reiterated the importance of stakeholder

feedback. Johnson told everyone that it would be advantageous to work together on a five-year economic strategy. Johnson explained that working together would create a positive environment that keeps visitors coming back.

## **V. TREASURER'S REPORT (John Meyers)**

Member Jacquez introduced Member Meyers. Member Meyers delivered a break down of the 2014 and proposed 2015 Visitor Center budgets. Next, Member Meyers showed the regional marketing budget covering 2014 and 2015. Member Meyers followed this with a presentation of the destination-marketing budget and proposed 2015 budget. Member Meyers finished by showing lodging receipts and TOT statistics.

## **VI. AGENCY REPORT (John Sorgenfrei, Rick Turton, and Kaci Knighton)**

John Sorgenfrei began by listing what TJA and Mental Marketing had accomplished to date. Sorgenfrei continued by explaining media direction taken during the past year. Sorgenfrei explained that Mental Marketing was working hard to plan FAM trips, host travel journalists, shoot videos of Morro Bay, and target family and adventure writers. Sorgenfrei listed recent exposure channels.

Kaci Knighton showed the increase in fans, reach, engaged users, and impressions from 2013 to 2014. Next, Knighton showed increases for YouTube attention. Knighton continued by listing future strategies. Knighton told everyone about a new trend where travelers were selecting a destination based on destination videos. Knighton explained that social advertising was now more affective than Google advertisements. Knighton told everyone that an imagery focused strategy allowed social users to dream and begin planning their vacation.

Rick Turton began by showing positive website statistics with a strong ROI. Turton explained the future of Morro Bay's website and recommended changing the template to a more responsive design that makes updates more intuitive.

John Sorgenfrei showed past creative and emphasized that TJA had focused on calling viewers to action. Sorgenfrei showed the new creative that was focused on branding Morro Bay's natural features. Sorgenfrei continued by showing and explaining the longevity of the new campaign, including the "have you ever... [touched a volcanic plug]" strategy. Sorgenfrei finished by showing the new YouTube video.

## **VII. SUSTAINABLE FUNDING REPORT AND DISCUSSION**

**A)** Member Solu explained the proposed TMD plans and shared recent updates.

**B)** Next, Member Solu showed a graph of the TMD board structure by municipality. Member Solu explained board terms and positions. Member Solu told everyone about the importance of having a strong Morro Bay presence in place.

**C)** Member Solu spelled out how denial or support of the TMD could play out.

**D)** Member Solu finished her update by listing the three logical ways to fund the TMD.

E) Member Meyers finished by showing a chart of sustainable funding options and their impact to the 2016 budget. Member Meyers encouraged stakeholders to think outside of the box and consider everything when determining where sustainable funding could go. Member Solu told hoteliers that they could expect to receive the sustainable funding packet and board reports.

## **VIII. OPEN FORUM – Questions and Comments from Stakeholders**

Jonni Biaggini asked about the timing of the vote. Stacie Jacobs asked that all feedback be submitted by May so that VSLOC could bring the decision before the cities. Member Amini explained how funding the County might make sense because the MBTB had already allocated .5% of the budget for VSLOC.

John Solu explained that asking for feedback on sustainable funding wasn't ideal because very few of the stakeholders present understood what VSLOC was bringing to the table. John Solu told the board that the first decision was to determine if VSLOC's proposal should be accepted or denied. Member Behman explained how Morro Bay would be assessed if the MBTB decided to fund VSLOC.

Stacie Jacobs explained that she hoped to create parity between all TOT businesses (RV parks, vacation rentals, etcetera). Jacobs gave a comparison of San Luis Obispo County to other counties. Jacobs continued by showing how the collected dollars could reach new markets not previously achievable. Member Amini sought to determine what new additions VSLOC would add for Morro Bay. Jacobs explained how VSLOC planned to expand the brand reach, increase collaboration efforts, and create resources that would allow all cities to measure success.

Ken MacMillan explained that increased TOT didn't mean an overall increase for everyone. MacMillan explained that if the integration was done properly, it could bring new people to the door that MBTB could then attract to Morro Bay. Nancy Johnson advised the board to send the sustainable funding information to the vacation rental and RV park owners using a City licensing database.

Carla Wixom explained how adding vacation rentals and RVs to the assessment would help fund the new program. Member Amini advised that these individuals would then need to have representatives on the board and commit their time too. Member Meyers explained from a budget standpoint why the MBTB board had not sought to add vacation rentals and RV parks.

John Solu explained how taking tourism under one voice had created a positive impact. John Solu advised that this was what VSLOC hoped to do. Stacie Jacobs explained that the TMD was a five-year commitment defined by law. Stacie Jacobs explained that there might be loopholes in the legal restrictions, but that these were not clear yet. Member Meyers reminded everyone that the most important decision was to decide if stakeholders liked the business plan presented by VSLOC.

John Solu proposed that MBTB could join VSLOC, but abandon ship down the line. Members Solu and Amini explained how this wasn't a possibility because the contract was binding (even if TBID disbanded). Jonni Biaggini advised that the City Council might determine if joining was possible, because of the possibility that TOT could be raised. Noah Smukler explained that the Council could not address this question due to the Brown Act. Ken MacMillan expressed that raising TOT another 1% was extremely frustrating when it was raised 1% a few years back. Member Jacquez voiced that the City would hopefully not raise the TOT because they recognized the value of tourism. Member Jacquez explained that the concept was a partnership between the MBTB and the City Council. Ken MacMillan added that if there was an increase, there should be a cap set where it couldn't be raised again for another [seven years]. Member Amini agreed stating that Morro Bay would not get the ROI equivalent to Paso Robles or Pismo Beach.

Susan Stewart, business owner in Morro Bay, explained that she promoted her own niche business within the perimeter of the MBTB. Susan Stewart continued explained that because of the MBTB, people were coming to the area and discovering her shop. Susan Stewart said that adding a percentage to VSLOC may be impractical, but joining with strong representation would continue to drive traffic toward the area.

Peter Behman presented a fourth option, saying that other resources, like in Mammoth Lakes, could share the burden. Christine Johnson requested that Stacie Jacobs explain the breakdown of what cities were contributing. Stacie Jacobs listed current BID amounts from each City. Member Solu told everyone that all hoteliers agreed that the desire was that all community members would join. Member Solu reminded everyone that information and surveys would be forthcoming.

Amit Patel asked if the survey would make a final decision. Member Jacquez explained that the vote wasn't final, but would help the board move forward in a preliminary direction.

#### **IX. DECLARATION OF FUTURE AGENDA ITEMS**

No future agenda items were listed.

#### **X. ADJOURNMENT**

Member Jacquez thanked everyone for coming out and closed the meeting at 12:15 p.m.

#### **MISSION STATEMENT**

**THE PURPOSE OF THE MORRO BAY TOURISM BUREAU IS TO PROMOTE AND INCREASE TOURISM IN THE CITY OF MORRO BAY BY IMPROVING AND STRENGTHENING THE CONDITION OF THE TOURISM BUSINESS ENVIRONMENT. THE OBJECTIVE SHALL BE ACCOMPLISHED THROUGH THE DEVELOPMENT AND OPERATION OF A TOURISM IMPROVEMENT DISTRICT AND OTHER MARKETING, BRANDING AND PROMOTIONAL PROGRAMS AND INITIATIVES.**

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CITY CLERK, (805) 772-6205. NOTIFICATION 24 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING.**

## AGREEMENT FOR SERVICES

This Agreement, dated January 1, 2013, is by and between the City of Morro Bay, hereinafter referred to as the "City," and the Morro Bay Tourism Bureau, hereinafter referred to as "Contractor," collectively referred to as the "parties."

### RECITALS

A. On April 29, 2009, the City adopted Ordinance number 546, hereinafter the "Ordinance," creating the Morro Bay Tourism Business Improvement District, hereinafter "MBTBID," in accordance with the provisions of the Parking and Business Improvement Area Law of 1989, Streets and Highways Code section 36500 et seq., hereinafter the "1989 Law."

B. The 1989 Law allows for formation of the MBTBID for a one-year term, and annual renewal of the MBTBID. The MBTBID has been continually renewed since its formation. In 2012, the MBTBID was renewed on May 22, 2012 by Resolution No. 25-12 (Resolution).

C. Streets and Highways Code section 36530 authorizes the City to appoint an advisory board for the MBTBID;

D. Contractor's Board of Directors was designated in the Resolution as the advisory board; and

E. City wishes to hire Contractor to provide MBTBID services. Contractor is willing to provide services to the City on the terms and conditions set forth in this Agreement.

### AGREEMENT

**Now, therefore,** the parties agree as follows:

1. Engagement. City hereby retains Contractor to provide the services described in Exhibit A, and Contractor accepts such engagement.
2. Term. The term of this Agreement shall begin on January 1, 2013 and end on May 31, 2013 or, if the MBTBID is disestablished prior to May 31, 2013, the effective date of MBTBID disestablishment. This Agreement may be renewed in one-year increments upon the approval of the parties at the annual renewal of the MBTBID.
3. Independent Contractor. No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an Independent Contractor. Contractor is not the agent or employee of the City in any capacity whatsoever, and City shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

A. Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, or employee benefits of any kind.

B. Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents, or employees and agrees to indemnify and hold City harmless from any and all liability which City may incur because of Contractor's failure to pay such amounts.

C. In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of City.

D. Contractor agrees to perform its work and functions at all times in strict accordance with all applicable federal, state, county, and city laws, resolutions, regulations, titles, departmental procedures and currently approved methods and practices in the field; and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely, and satisfactory manner and in accordance with standards required by the City.

E. Notwithstanding the foregoing, if the City determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, City may upon two (2) weeks' written notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

4. Indemnification.

A. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the City, its City Council, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss there from, or to any violation of federal, state or municipal

law or regulation, and (2) is caused by any negligent act, omission or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The City may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

B. To the fullest extent permitted by law, the City shall hold harmless, defend and indemnify Contractor, its Board of Directors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss there from, or to any violation of federal, state or municipal law or regulation, and (2) is caused by any negligent act, omission or willful misconduct of City, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor may participate in the defense of any such claim without relieving City of any obligation hereunder.

5. Insurance. Insurance coverage in a minimum amount set forth herein shall not be construed to relieve Contractor for liability in excess of such coverage, nor shall it preclude City from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

A. Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and Contractor further assures that it will comply with such provisions before commencing the performance of work under this Agreement. Contractor shall furnish to City certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and Contractor shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of Contractor's and subcontractors' employees.

B. Contractor shall furnish to City certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

(1) Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.

(2) Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

6. Worker's Compensation. Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense. Neither Contractor nor its carrier shall be entitled to recover from City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

7. Conformity with Law.

A. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, resolutions, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold City harmless from any and all liability, fines, penalties, and consequences from any of Contractor's failures to comply with such laws, Resolutions, codes, and regulations.

B. If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the City. Contractor shall promptly submit to City a written report, in such form as may be required by City, of all accidents which occur in connection with this Agreement. This report must include the following information:

- (1) Name and address of the injured or deceased person(s);
- (2) Name and address of Contractor's sub-contractor, if any;
- (3) Name and address of Contractor's liability insurance carrier; and
- (4) A detailed description of the accident and whether any of City's equipment, tools, material, or staff were involved.

C. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the City the opportunity to review and inspect such evidence, including the scene of the accident.

8. Payment. On a monthly basis, City shall forward to Contractor the MBTBID assessment funds collected. Funds shall be disbursed to Contractor no more than ten days after they are received by the City.

9. Taxes. Payment of all applicable federal, state, and local taxes shall be Contractor's sole responsibility.

10. Ownership of Documents.

A. Contractor hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns the City and its assignees all copyright and other use rights in any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports, and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the City, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes electronic copies of all above stated documentation.

B. Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by City to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the City and any assignee of the City an express royalty – free license to retain and use said Documents and Materials. The City's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

C. Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by Contractor and incorporated into the work as set forth in Exhibit "A," and shall defend, indemnify, and hold the City harmless from any claims for infringement of patent or copyright arising out of such selection.

D. The City's rights under this Section shall not extend to any computer software used to create such Documents and Materials.

E. Contractor shall maintain all documents and records in accordance with the California Public Records Act, Government Code section 6250 et seq.

11. Conflicts of Interest. Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with performance of services required under this Agreement.

12. Notices. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

A. Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

B. First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after

deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

C. Overnight Delivery: When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

D. Addresses for purpose of giving notice are as follows:

**To City:**  
City of Morro Bay  
Attn: Robert Schultz  
595 Harbor Street  
Morro Bay, CA 93442

**To Contractor:**  
Morro Bay Tourism Bureau  
c/o Joan Solu, Chairperson  
255 Morro Bay Boulevard  
Morro Bay, CA 93442

E. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

F. Any party may change its address by giving the other party notice of the change in any manner permitted by this Agreement.

13. Use of City Property. Contractor shall not use City property, including equipment, instruments and supplies, or personnel for any purpose other than in the performance of its obligations under this Agreement.

14. Equal Employment Opportunity Practices Provisions. Contractor certifies that it is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11375 and supplemented I 45CFR, Part 60, Title VII of the Civil Rights Act and any other federal or state laws pertaining to equal employment opportunity and that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, political affiliation, or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation, or termination.

A. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

B. Contractor shall, if requested to so do by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

C. If requested by the City, Contractor shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

D. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

E. Contractor shall include the provisions set forth in this Section in each of its subcontracts.

15. Compliance with Licensing Requirements. Contractor shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, and file copies of same with the City.

16. Audits and Records Access.

A. Contractor shall make available to the City, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement of MBTBID assessment funds, and shall furnish to the City, within sixty (60) days after examination, its authorized agents, officers, or employees such other evidence or information as the City may require with regard to any such expenditure or disbursement charged by Contractor.

B. Contractor shall maintain full and adequate records in accordance with City requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the City, Contractor shall, upon request of the City, make such books and records available to the City for inspection at a location within City or Contractor shall pay to the City the reasonable and necessary costs incurred by the City in inspecting Contractor's books and records, including, but not limited to, travel, lodging, and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The City further reserves the right to examine and re-examine said books, records, and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the City, and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the City makes the

final or last payment or within four (4) years after any pending issues between the City and Contractor with respect to this Agreement are closed, whichever is later.

17. Documents and Materials. Contractor shall maintain and make available to City for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in this Agreement. Contractor's obligations shall continue for four (4) years following termination or expiration of this Agreement, and Contractor shall in no event dispose of, destroy, alter, or mutilate said Documents and Materials, for four (4) years following the City's last payment to Contractor under this Agreement.

18. Time of Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

19. Termination/Disestablishment. The City has and reserves the right to suspend, terminate or abandon the execution of any work by Contractor without cause at any time after the adoption of a resolution of intention to disestablish the MBTBID pursuant to the 1989 Law by City and upon providing Contractor a copy of the adopted resolution of intention. In the event the City disestablishes the MBTBID, Contractor shall be entitled to retain MBTBID revenues only for paying the Contractor's current liabilities of the MBTBID. Pursuant to the 1989 Law, Contractor shall refund to City any remaining MBTBID revenues or any revenues derived from the sale of assets acquired with MBTBID revenues to enable distribution of the revenues to the businesses which paid the assessment. Contractor agrees that City has and reserves the right to deny the transfer of MBTBID revenues and/or suspend, terminate or abandon the execution of any work by the Contractor in accordance with this agreement or misfeasance, nonfeasance, or gross malfeasance, or criminal conduct as determined by a court of competent jurisdiction. Any retention of MBTBID revenues by Contractor shall comply with the 1989 Law.

20. Choice of Law. This Agreement, and any dispute arising from the relationship between the parties hereto, shall be governed by the laws of the State of California.

21. Advertising or Publicity. Contractor shall not use, reproduce or copy the seal of the City and shall not represent the City in an official capacity as spokesperson or officer or agent or use the name City of Morro Bay, or the names of the City's officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the City in each instance unless set forth in this Agreement. Nothing in this section prohibits Contractor from using the name Morro Bay Tourism Business Improvement District or City of Morro Bay for regional identification for promotion and marketing of the MBTBID.

22. Entire Agreement. This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between City and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any

exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.

23. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by mutual agreement of the parties; however, this Agreement shall be subject to any amendments to the MBTBID per resolutions adopted by the City Council. No supplement, amendment, or modification of this Agreement, except for a duly adopted amendment to the MBTBID, shall be binding unless it is in writing and signed by authorized representatives of both parties.

24. Assurance of Performance. If at any time the City has good objective cause to believe Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete services as required by this Agreement, City may request from Contractor prompt written assurances of performance and a written plan acceptable to City, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of City's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

25. Subcontracting/Assignment. Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the City's prior written approval.

A. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

B. Contractor may use subcontractors to provide any portions of the service identified in Exhibit A without prior written consent of the City.

C. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.

26. Survival. The obligations of this Agreement, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation obligations regarding indemnification, ownership of documents, and conflict of interest, shall survive termination or expiration for two (2) years.

27. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

City of Morro Bay

Morro Bay Tourism Bureau

By   
Andrea Lueker  
(print name)

By   
Joan Solu - Michele-Jacquez  
(print name)

Title: City Manager

Title: President - Vice President

Date: January 23, 2013

Date: 1/24/2013 - 1/24/2013

## EXHIBIT A

### Scope of Services

Contractor shall provide the following services:

1. Contractor shall cooperate with City and City staff in the performance of all work hereunder.
2. Contractor will provide projects, programs and activities that benefit lodging establishments within the MBTBID in accordance with the MBTBID Ordinance, Resolutions, and the Annual Report attached hereto and any subsequent amendments thereto.
3. Contractor will provide and fund such additional projects, programs, and activities to promote tourism in Morro Bay as may be made possible through other non-assessment funding sources. These other funds must be accounted for separately from assessment funds.
4. Contractor shall perform responsibilities of the Advisory Board under the 1989 Law, including but not limited to:
  - a. Preparation of the Assessment Report required by Streets and Highways Code section 36533, which shall be filed with the City Clerk and include:
    - i. Any proposed changes in the MBTBID boundaries or benefit zones;
    - ii. The improvements and activities to be provided for the fiscal year;
    - iii. An estimate of the cost of providing the improvements and activities for the fiscal year;
    - iv. 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 or her business for that fiscal year;
    - v. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year; and
    - vi. The amount of any contributions to be made from sources other than assessments levied.
  - b. Delivering the Annual Report at least thirty (30) days preceding the fiscal year for which assessments are to be levied and collected to pay the costs of the improvements.
5. Contractor shall develop and maintain financial records related to receipt and/or expenditure of all funds received from City.

6. Contractor may retain subcontractors to deliver the services herein; however, Contractor shall remain fully responsible for compliance by its contractors with all the terms of this Agreement, regardless of the terms of any agreement between the Contractor and its subcontractor.

## **Morro Bay Visitor Center Agreement**

This Agreement is made and entered into this 1<sup>st</sup> of January, 2013 by and between the City of Morro Bay, a municipal corporation, hereinafter referred to as "City" and the Morro Bay Tourism Bureau, a non-profit corporation, hereinafter referred to as "Bureau".

### **Recitals**

Whereas, City recognizes that the need for continued development of the economic base if the community is important, and therefore, wishes to provide for a coordinated effort to encourage, promote, and foster the economic development of the community, and promote its advantages as a tourist and recreational center; and

Whereas, arranging, obtaining and distributing favorable coverage about the community, to be read by potential visitors to City, is an integral part of its promotion as a tourist and recreation center; and

Whereas, Bureau has experience, together with available facilities to provide visitor center services, necessary to enhance the economic development and vitality for the City; and

Whereas, the City and the Bureau agree that these goals can best be accomplished through the operation of a Visitor Center by the Bureau, under the terms and conditions outlined hereinafter, making use of funds provided, pursuant to this contract, by City for operations of the Visitor Center.

### **Covenants**

Now, therefore, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereto, as well as to the public good of all the citizens of Morro Bay, the parties have agreed, and do hereby agree, as follows:

1. That the foregoing recitals are true and correct, and constitute accurate statements of the facts herein.
2. The term of this agreement shall commence on January 1, 2013 and terminate on June 30, 2013.
3. The maximum amount due and payable during the term of this contract is \$51,245. City shall pay said amount to Bureau in monthly increments of \$8,540.83, in advance, for each contract month. Such funds are to be expended only under the terms, conditions and restrictions, and for the purposes specifically set forth in this agreement.
4. The Bureau shall provide and perform services to facilitate the welcoming and hospitality of visitors to Morro Bay, in a manner designed to promote the unique character, heritage and special attributes of the community and enhance the economic vitality of the City.
5. The Bureau shall provide qualified and competent staff in public relations, and public information shall be available, as necessary, for the successful implementation of the

Agreement. The Bureau's Executive Director shall be responsible for the day-to-day operations and management of the agreement.

6. The Bureau shall also maintain an office in the City suitable for the conduct of visitor information services. Said office is to be open to facilitate contact with news media representatives, and to disseminate new releases and promotions information, in a professional manner, for various media, general public, and visitor information needs. The Visitor Center shall be open on all weekends and holidays with the exception of Thanksgiving Day, Christmas Eve, Christmas Day, New Years Day and Easter. The Visitor Center will be open every day and at least 50 hours per week during high season (Memorial Day through Labor Day) and at least 40 hours per week the remainder of the year.
7. The Bureau shall conduct promotional and publicity activities and programs for the City and maintain an electronic events calendar on the City website and the Chamber of Commerce website, if desired.
8. The Bureau shall respond promptly (same business day) to high volumes of information requests including telephone calls and emails. The Bureau shall maintain a voice mail system during closed office hours to receive messages for visitor information requests.
9. The Bureau shall coordinate services for prospective visitor groups, to include referrals to motels, rental facilities, caterers, entertainment and other services. Said referrals will be tracked and recorded. The Bureau shall provide promotional publication materials for visitors, in a quality form acceptable to City, that specify recreational opportunities, campgrounds, art galleries and other services.
10. The Bureau shall ensure that no funds provided by City will be used to support non-visitor center activities. Nothing in this contract, however, shall prevent the City from specifically funding new projects as proposed by the Bureau.
11. The Bureau shall submit written and oral monthly reports to the Tourism Business Improvement District (TBID) regarding visitor information and promotional activities. These reports need not be lengthy, but should be specific as to the following:
  - a. Number of visitors to the Visitor Center.
  - b. The type and quantity of materials dispensed from the Visitor Center.
  - c. Summary of telephone and email information requests received.
  - d. The type and quantity of any special materials distributed to groups.
  - e. The number of Destination Guides mailed and visitor site referrals made.
  - f. Responses to City TBID specials and packages.
  - g. Summary of the Monthly expenditures delineating Visitor Center expenditures.
  - h. Copies of invoices to support charges.

Failure to provide such monthly reports will be considered by the City as possible grounds for termination of the contract.

12. The Bureau agrees to make its books and financial records concerning the funds expended under this agreement available to City for inspection, review and audit. The Bureau will, at no expense to City, provide an annual report and accounting of expenditures of the funds covered by this agreement. The City Administrative Services Director shall work with the Bureau to perform a detailed financial review at the end of a fiscal year which will be presented to the TBID.
13. The Bureau agrees that all persons working for the Bureau under this Agreement shall be employees of the Bureau, subject to the exclusive management and control, and shall in

no way be considered employees of City; and that any liability, which might arise under the Worker's Compensation Law of the State of California due to any injury of any employee of the Bureau, shall be the sole liability of the Bureau. The Bureau shall, throughout the period of this Agreement, maintain in full force and effect, a policy of worker's compensation insurance meeting statutory limits of Labor Code covering all its employees and volunteers. Said policy shall include a waiver of subrogation against City, its officers, agents, employees and volunteers.

14. The Bureau shall not use any monies received under this Agreement for the endorsement, opposition or participation in any political or lobbying activity involved in the support or opposition to any candidate for public office or proposed ballot measure.
15. The Bureau agrees to indemnify, defend and hold harmless City, and its officers, employees, and agents, from any and all claims, suits, demands and causes of action resulting from the acts or failure to act of any agent, servant or employee of the Bureau.
16. The Bureau shall obtain and maintain, in full force and effect during the term of the Agreement, a \$1,000,000 liability insurance policy specifically naming City as primary additional insured against claims and demands resulting from injuries to persons and property upon premises maintained by the Bureau, during Bureau sponsored activities and events, wherever situated. Said insurance policy shall provide for thirty (30) day notice of cancellation to City. Within ten (10) days of the date of execution of this Agreement, the Bureau shall submit to City evidence of such insurance.
17. Notwithstanding any other representation, oral or written, between the parties, including any and all agents or representatives thereof, the Bureau is at all times during the term of this Agreement acting as a free and independent contractor, and shall not be an employee or an agent of the City.
18. Except as City may authorize in writing, the Bureau shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. The Bureau shall have no authority, express or implied, pursuant to this Agreement, to bind City to any obligations whatsoever.
19. The Bureau shall not enter into any contract or agreement that will create a conflict of interest with its duties to City under this Agreement. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, of association in which he is directly or indirectly interested. The Bureau warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement
20. The Bureau represents and warrants to City that it has, and shall maintain at all time during the term of this Agreement, at its sole cost and expense, all business licenses, permits, qualifications and approvals of whatsoever nature which are legally required for the Bureau to provide the service hereunder.
21. The Bureau shall perform all services required pursuant to this Agreement in a manner and according to the standards observed by a competent practitioner of the profession in which the Bureau is engaged. All products and services of any nature which the Bureau provides to City and to visitors to the Visitor Center shall conform to the standards of a quality normally observed by licensed, competent organizations practicing in the Bureau's profession.

22. The Bureau shall devote such time to the performance of services as may be reasonably necessary for the satisfactory performance of the Bureau's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause, present or future, which is beyond the reasonable control of the parties. The Bureau agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services pursuant to this Agreement.
23. During the term of this Agreement should the Bureau be dissolved, disbanded, or otherwise cease to function in a manner described in this Agreement, all funds attributable to the City, and equipment purchased out of funds provided by the City, shall revert to ownership of the City. For the purpose of this provision, the Bureau shall maintain a written record of, and include as part of each annual report, a listing of capital equipment that has been purchased with the funds provided by the City.
24. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligations pursuant to this Agreement shall be void and of no effect.
25. The Bureau agrees to comply with all fair employment practice laws of the State and Federal government. The Bureau covenants and agrees for itself, its successors, its assigns and every successor in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, medical condition, disability, marital status, ancestry or national origin in the provision of any services to be provided by the Bureau hereunder, nor shall the Bureau of any person claiming under or through the Bureau establish or permit any such practice or practices of discrimination of segregation in the provision of any services to be provided by the Bureau hereunder.
26. The failure of the Parties to abide by any of the terms of this Agreement shall constitute a default under this Agreement. If either party fails to cure any such default within five (5) days of receiving notice from the other party of such default, then this Agreement may be terminated by giving ten (10) days written notice of such termination. Upon any such termination, the final monthly payment to be paid under Paragraph 3, above, shall be adjusted on a pro rata basis, based on a 30 day month, to the date of such termination, and if applicable, the Bureau shall immediately return to City any amounts previously paid by City for any period subsequent to the date of such termination.
27. In addition to termination pursuant to Paragraph 26 above, this Agreement may be terminated in whole or in part at any time by either party hereto upon thirty (30) days written notice to the other as identified below. In the event of any termination of this Agreement, all rights and obligations of both parties hereto, including without limitation the monthly payment from City to the Bureau hereunder, shall terminate as of the date of such termination (and the final monthly payment shall be adjusted on a pro rata basis to the date of such termination).
28. This document represents the entire understanding between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended in writing signed by both parties.
29. Should any provision of this Agreement be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable. This Agreement shall in all respects be governed by the laws of the State of California.

30. In the event suit is brought for the enforcement, or interpretation, of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

City of Morro Bay

  
\_\_\_\_\_  
Andrea Lueker, City Manager

Morro Bay Tourism Bureau

  
\_\_\_\_\_  
Joan Solu, Chairperson

*Contract - Michele Jacquez*  
*Vice-Chair*