



north lake tahoe

Chamber | CVB | Resort Association

MEMORANDUM

Date: 1/10/20

TO: NLTRA Board of Directors

FROM: Rob Kautz

RE: Agreement with County on direction and use of TOT funds

Action Requested:

Board approval of Agreement

Background:

In conjunction with the board meeting last Wednesday (1/8) you were emailed a draft of the Agreement between the County Board of Supervisors and NLTRA related to the TOT funds which will be redirected to workforce housing and transportation programs and projects if a TBID is formed. At the board meeting I related that the Agreement was nearly finalized, but our attorney, Steve Gross, and County Counsel, Karen Schwab, were finalizing the Hold Harmless and Indemnification language. Attached is the Agreement, which includes the additional indemnity language; both Steve Gross and I believe this Agreement is adequate and it achieves our objectives. I am requesting the NLTRA board approve the Agreement so it can be executed and then be placed on the Board of Supervisors January 14, 2020 agenda for its approval.

Attachment:

Agreement between the County of Placer and the North Lake Tahoe Resort Association

**AGREEMENT BETWEEN THE COUNTY OF PLACER
AND THE NORTH LAKE TAHOE RESORT ASSOCIATION**

This Agreement is made by and between the County of Placer, a political subdivision of the State of California ("County") and the North Lake Tahoe Resort Association, Inc., a California Nonprofit Public Benefit Corporation ("NLTRA") (hereinafter sometimes referred to individually as "Party" and collectively as "Parties").

Whereas, in June 2019, the County and NLTRA executed a one year agreement to convey a percentage of Transient Occupancy Tax ("TOT") revenues to the NLTRA for the purposes of performing certain services recommended in the 2015 North Lake Tahoe Tourism Master Plan ("TOT Agreement"); and

Whereas, such services include but are not limited to support for the Tourism Master Plan implementation, development of comprehensive public relations and marketing of programs to maximize the exposure and promotion of eastern Placer County and provision of eastern Placer County visitor services; and

Whereas, the NLTRA seeks to form a Tourism Business Improvement District ("TBID"), which if successful would create a TBID for an initial five year period and assess all lodging, restaurant, retail and activities and attractions businesses located within the designated boundaries of the TBID; and

Whereas, if successful the TBID would have an initial five (5) year term; and

Whereas, both the County and NLTRA recognize the importance of continued funding of transportation and workforce housing programs and projects in eastern Placer County; and

Whereas, during the term of the TBID the County and NLTRA wish to ensure a percentage of TOT proceeds continue to be allocated to eastern Placer County and specifically to workforce housing and transportation programs and projects.

Now, therefore, for and in consideration of the mutual promises and agreements herein contained, it is agreed by and between the Parties hereto as follows:

1. TERM. The term of this Agreement shall commence on the formation date of the TBID and shall continue for the initial five (5) year term of the TBID ("Term").
2. TERM EXTENSION. If the TBID is renewed for a ten (10) year period, the Parties will consider but are not obligated to extend the Term of this Agreement ("Term Extension").
3. TOT AGREEMENT and TRANSITIONAL TOT AGREEMENT. The Parties acknowledge the current TOT Agreement term is from June 25, 2019 through June 30, 2020. Depending on the TBID formation date and the timeframe for receipt of

assessment revenue, the Parties acknowledge the potential need for a transitional agreement funded with TOT revenue for a portion of FY 2020-21 (“Transitional TOT Agreement”) to cover NLTRA event contracts and expenses. The provisions of the Transitional TOT Agreement, including the percentage of TOT allocated, shall be separately negotiated. The Transitional TOT Agreement is intended to be a short-term agreement in place only until the TBID revenues support NLTRA operations. It will be in addition to this Agreement which covers the overall program as outlined in Section 4. The TOT Transitional Agreement will also include development of a base budget to manage the process and NLTRA committee beginning in fiscal year 2020-21. Once the TBID revenues support NLTRA operations, the Transitional TOT Agreement will terminate.

4. TOT ALLOCATION. Commencing in the fiscal year 2020-21 and continuing each fiscal year during the Term of this Agreement, the County agrees to allocate twenty-one percent (21%) of TOT proceeds generated in the North Lake Tahoe TOT Collection Area of Placer County on an annual fiscal year basis and retain the same in a separate County account for expenditure on workforce housing and transportation programs and projects in the eastern portion of the County (“TOT Allocation”). Said amount will include funding for the NLTRA to Co-Chair the CAP Committee and work to manage the NLTRA committee as described in this Agreement. Any funds remaining at the end of a particular fiscal year may be carried forward to the next fiscal year during the Term of this Agreement for workforce housing and transportation projects. If there are funds in reserve after the contract expires and the agreement is not renewed, the county will reserve those funds to housing and transportation service.

Ninety days prior to the commencement of each fiscal year, commencing with fiscal year 2020-21, the County will establish a base budget for NLTRA expenditures to Co-chair the CAP committee and to manage the NLTRA committee. The NLTRA will provide a scope of work based on this base budget and submit to the Board through the County Executive Office for approval. The budget and scope of work shall dictate reimbursements and payments for said expenditures

5. NLTRA COMMITTEE.

a. Formation. The County agrees for the Term of the TBID that a committee made up of members outlined below would be formed to make recommendations to the Board of Supervisors (“Board”) for uses of the TOT Allocation (“NLTRA Committee”). NLTRA shall form said committee and seek appointments through a public process prior to the start of the 2020-21 fiscal year and notify the County in writing of the committee members. The TOT Agreement may be amended to fund the first phase of public outreach to develop the NLTRA Committee and the process by which said committee will recommend the TOT Allocation to the Board.

b. Membership. The NLTRA Committee should include representation and seek appointments from transportation and workforce housing organizations including but not limited to:

- Mountain Housing Council or future regional housing entity
- Truckee North Tahoe Transportation Management Association
- Other organizations focused on transportation and workforce housing

Representatives with expertise in transportation and workforce housing not associated with these organizations may be selected to meet this requirement.

The committee should also include up to two advisory (non-voting) seats for county representatives appointed by the County Executive Officer. County representatives will be selected based on experience in transportation, affordable housing and policy development in eastern Placer County. NLTRA shall update the County in writing when committee members change.

c. **Scope of NLTRA Committee.** The NLTRA Committee will focus on identifying affordable housing and transportation programs and projects in the eastern portion of the County. Said programs and projects shall be consistent with policies and programs contained in the Housing Element, the Placer County Housing Work Plan, the TART Systems Plan, the Tourism Master Plan, Transportation Demand Management, the Placer County Transportation Planning Agency's Regional Transportation Plan or the Tahoe Regional Planning Agency's Regional Transportation Plan. By-laws or similar organizational parameters will be established to assist the Committee in reviewing such programs and projects, rating the same and provide a process to recommend the same to the Board.

The NLTRA Committee shall coordinate with other organizations and community-based groups to ensure alignment with regional transportation and workforce housing plans and initiatives. The NLTRA shall also engage the public to develop recommendations to the Board for uses of the TOT Allocation.

d. **NLTRA Committee Recommendations.** During the 2020-21 fiscal year the NLTRA Committee shall convey its recommendations for workforce housing and transportation programs and projects to the Board no later than December 1, 2020. This first recommendation will include the 2020-21 fiscal year TOT allocation and 2019-20 fiscal year unassigned fund balance from the Tahoe Tourism and Promotions Fund in the amount of \$2,100,000. Thereafter the NLTRA Committee shall convey said recommendations prior to the commencement of the fiscal year. Said recommendations will be considered by the Board during a regularly scheduled public meeting. The Board shall be the final decision maker on any and all recommendations of the NLTRA Committee and shall have the final authority to expend said TOT Allocation. The County agrees the expenditures of said TOT Allocation per fiscal year will be designated to workforce housing and transportation programs and projects.

6. TAHOE TOT.

a. The Parties acknowledge that the North Lake Tahoe Transient Occupancy Tax Area requires each transient to pay an additional two percent (2%) for a

total tax in the amount of ten percent (10%) ("Tahoe TOT"). The Parties also acknowledge that the Tahoe TOT sunsets on September 30, 2022. If the TBID is formed and this Agreement is executed, NLTRA agrees to support a ballot measure to extend the two percent (2%) TOT assessment without a sunset provision. Said ballot measure is the only one anticipated by the County at this point in time to occur during the Term of this Agreement.

7. TERMINATION.

a. TBID Term Expiration. If the TBID is not extended beyond the initial five (5) year term or at termination of the TBID, whichever occurs first, this Agreement shall terminate. In such event, the County will negotiate a new agreement with NLTRA for allocation of twenty-one percent (21%) of TOT proceeds or based on an agreed-upon percentage of then available TOT funding, generated in the North Lake Tahoe TOT Collection Area commencing the fiscal year following termination of the TBID with a three percent escalator. The scope of work for said agreement shall be negotiated separately but is anticipated to include support for tourism marketing as well as workforce housing and transportation projects and programs. Said scope of work will also include funding for CAP Committee support.

b. TBID Early Termination. If the TBID is terminated during the initial five (5) year term, this Agreement shall become terminable as of the date of the TBID termination. In such an event, the County will negotiate a new agreement with the NLTRA based on available TOT funding.

c. Ballot Measure Failure. If the ballot measure to extend the two percent (2%) TOT assessment fails, the Parties will meet and confer to determine whether sufficient TOT funding is still available without the additional two percent (2%) TOT to continue this Agreement. If not, the Parties agree to terminate this Agreement.

d. Termination Without Cause. The Parties may mutually agree to terminate this Agreement prior to expiration of the Term without cause. In such event, unspent TOT proceeds after the date of termination may be allocated by the County for other purposes. In the event of early termination, the County is under no obligation to prepare or execute a new agreement identified under 7(a).

8. GENERAL.

A. Hold Harmless and Indemnification Agreement.

NLTRA hereby agrees to protect, defend, indemnify, and hold Placer County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by Placer County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way

incident to, in connection with or arising directly or indirectly out of this Agreement unless such damage or claim arises from the negligence or willful misconduct of the County. NLTRA agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the NLTRA. NLTRA also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against NLTRA or the County or to enlarge in any way the NLTRA's liability but is intended solely to provide for indemnification of Placer County from liability for damages or injuries to third persons or property arising from NLTRA's negligent performance pursuant to this Agreement.

COUNTY hereby agrees to protect, defend, indemnify and hold NLTRA free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by NLTRA arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the NLTRA) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of actions or decisions the County and/or the Board may ultimately take related to NLTRA-recommended projects as described in Section 5(d). COUNTY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the COUNTY. COUNTY also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. The County and/or Board retain all rights and independent authority to settle any such actions in a manner that benefits the County and/or Board. This provision is not intended to create any cause of action in favor of any third party against NLTRA.

B. Insurance

NLTRA shall file with County concurrently herewith a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A-:VII showing the following:

1. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:
 - a. Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.
 - b. If there is an exposure of injury to NLTRA's employees under the U.S. Longshoremen's and Harbor Worker's Compensation

Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

- c. Each Worker's Compensation policy shall be endorsed with the following specific language:
- d. Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the NLTRA.
- e. Contractor shall require all Subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

2. GENERAL LIABILITY INSURANCE:

- a. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of NLTRA, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
- b. Contractual liability insuring the obligations assumed by NLTRA in this Agreement.
- c. One of the following forms is required:
 - i. Comprehensive General Liability;
 - ii. Commercial General Liability (Occurrence); or
 - iii. Commercial General Liability (Claims Made).
- d. If NLTRA carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence

→Two million dollars (\$2,000,000) aggregate

- e. If NLTRA carries a Commercial General Liability (Occurrence) policy:
 - i. The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products-Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
 - ii. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

- f. Special Claims Made Policy Form Provisions:
NLTRA shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:
 - i. The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
 - ii. The insurance coverage provided by NLTRA shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims

Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

3. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- a. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- b. "The insurance provided by the NLTRA, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

4. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include any automobiles/trucks used in performance of this Contract, whether owned, non-owned, or hired.

5. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than one million dollars (\$1,000,000).

If NLTRA sub-contracts in support of NLTRA's work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the NLTRA shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

6. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - NLTRA shall be responsible for all deductibles in all of the NLTRA's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

NLTRA's Obligations - NLTRA's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

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

Material Breach - Failure of the NLTRA to maintain the insurance required by this Agreement or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

Cancellation Notice – In the event Insurance Coverages are cancelled, suspended, voided, or reduced in coverage or in limits, NLTRA shall provide written notice to County at NLTRA's earliest possible opportunity and, in no case, no later than 5 days after NLTRA is notified of the cancellation.

C. Notices. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered, and addressed to the Parties as follows:

COUNTY OF PLACER
County Executive Office
175 Fulweiler Avenue
Auburn, CA, 95603

NORTH LAKE TAHOE RESORT ASSOCIATION
Post Office Box 5459
Tahoe City, CA 96145

D. Audit. The County shall have the right to perform an audit of the financial records of the NLTRA at its own cost at any time to verify payments and expenditures made under this Agreement. Upon request of the County, the NLTRA agrees to make its financial records available to the County for any such review within a reasonable period of time.

Any notice so delivered personally shall be deemed to be received on the date of delivery and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

E. Amendments. No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by all Parties.

F. Assignment. No Party shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of each of the other Parties. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

G. Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the Placer County Superior Court.

H. Authority. Each undersigned Party agrees it has the legal authority to execute this Agreement.

I. Entire Agreement. This Agreement sets forth the entire understanding between the parties as to the subject matter of the agreement and merges all prior discussions, negotiations, letters of understanding, or other promises, whether oral or in writing.

J. Counterparts / Facsimiles This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

In witness, whereof, the parties have executed this Agreement on the day and year written below.

COUNTY OF PLACER:

County of Placer, Board Chair

Date

APPROVED AS TO FORM:

County Counsel

Date

NORTH LAKE TAHOE RESORT ASSOCIATION:

Name

Date

Title

APPROVED AS TO FORM:

Attorney for NLTRA

Date