

# Warren County Board of Supervisors

## RESOLUTION NO. 269 OF 2011

**Resolution introduced by Supervisors Kenny, Merlino, Bentley, Champagne, Goodspeed, McCoy and Conover**

### **AUTHORIZING CHANGES TO THE WARREN COUNTY TOURIST AND CONVENTION DEVELOPMENT AGREEMENT FOR THE DISTRIBUTION OF OCCUPANCY TAX FUNDING**

WHEREAS, the Warren County Occupancy Tax Coordination Committee has reviewed and suggested certain changes be made in the Warren County Tourist and Convention Development Agreement for the distribution of Occupancy Tax funding for events promoting tourism in Warren County, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby approve and authorize certain changes to the Warren County Tourism and Convention Development Agreement for the distribution of Occupancy Tax funding for the promotion of tourism in Warren County as outlined in the attached Schedule "A" which is a copy of the current agreement showing the proposed changes.

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*Schedule "A"*

**WARREN COUNTY TOURIST AND CONVENTION  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT made by and between the COUNTY OF WARREN, a municipal corporation and political subdivision established under the Laws of the State of New York, having its principal offices and place of business located at the Warren County Municipal Center with a mailing address of 1340 State Route 9, Lake George, New York 12845 (the "COUNTY"), and \_\_\_\_\_, an organization formed under the laws of the State of New York, having its principal office and place of business located at \_\_\_\_\_, New York \_\_\_\_\_, (hereinafter called the " SPONSOR").

**RECITALS**

1. SPONSOR desires to hold the \_\_\_\_\_ in Warren County, New York, during \_\_\_\_\_ of 2011, (hereinafter called the " EVENT ").
2. The COUNTY has established a tourist and convention development program whereby the COUNTY will provide funding for certain qualifying conventions, events, trade shows and other directly related and supporting activities.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL REPRESENTATIONS AND COVENANTS CONTAINED HEREIN THE PARTIES AGREE AS FOLLOWS:

1. EVENT

SPONSOR represents and agrees that it shall hold the \_\_\_\_\_ in Warren County, New York, commencing the \_\_\_\_\_ day of \_\_\_\_\_, 2011 and continuing thereafter for a period of \_\_\_\_\_ day(s)week(s) in \_\_\_\_\_.

2. EVENT ARRANGEMENTS

The SPONSOR represents and warrants that:

- A. the following licenses, contracts and/or infrastructure has been or will be arranged for to support the EVENT (include other governmental or non-profit group commitments):  
  
\_\_\_\_\_

- B. As of the time the application was filed for funding under this contract, the following funding had been obtained from the businesses, persons or governmental or non-profit agencies listed :

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- 
- C. The number of attendees is projected to be \_\_\_\_\_;
  - D. the number of hotel, motel, inn, bed and breakfast or other overnight accommodations is anticipated or projected to be \_\_\_\_\_, and the length of stay is anticipated to be \_\_\_\_\_ days;
  - E. the following marketing and advertising is planned to occur in the following markets and areas (specify local, regional, state, national etc):
- 

- F. the total cost to be borne by SPONSOR for the EVENT is \_\_\_\_\_;
- G. the total amount that SPONSOR has calculated that needs to be raised to fund the EVENT that is currently not available or expected to be available is \$\_\_\_\_\_.

3. PROMOTIONAL AND MARKETING CONSIDERATION FOR COUNTY

- A. The SPONSOR shall use the Warren County Tourism Logo with website provided by the Tourism Department in all promotional and marketing distributed for the EVENT where reimbursement is requested. The use and placement of the logo shall be first approved by the Tourism Department. Any advertising, promoting and marketing for the EVENT must include the Warren County Tourism logo with website to be reimbursed.
- B. When the Sponsor utilizes the Warren County Tourism Logo online, a hyperlink must be created to link to the URL [www.visitlakegeorge.com](http://www.visitlakegeorge.com).**
- C. The Sponsor shall provide, at no cost, up to one (1) full page of advertising as shall be requested by the County Tourism Department for County promotion and/or advertising in the primary program, directory, magazine or other publication used by the Sponsor during the event.

4. PERFORMANCE REPORT

The Sponsor shall use reasonable efforts to collect home zip codes from those in attendance at the event funded hereunder. The Sponsor shall provide to the County a written report which provides an estimate of the **total** number of attendees ~~to the event each day together~~ with a listing of the number of people from each zip code ~~obtained each day of the event~~. Reasonable efforts to collect the information requested hereunder shall be deemed to have been made if the Sponsor has at least one person at each entrance to the event attempting to collect zip codes. **The Sponsor will also attempt to collect information substantiating the number of rooms used by attendees during the event.**

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**5. COUNTY FUNDING**

In consideration of the:

- A. marketing and promotional opportunities,
- B. the benefit to be derived by the communities, businesses and residents of Warren County
- C. the terms of this agreement;
- D. to provide an incentive to the SPONSOR to hold the EVENT in Warren County, and
- E. the performance report,

the COUNTY shall pay the sum of \$\_\_\_\_\_ to SPONSOR for use in offsetting expenses for the EVENT. Such sum shall be payable, as follows :

**[SELECT ONE OF THE FOLLOWING]**

provided the event has occurred and concluded, within twenty-seven (27) days of the time of SPONSOR furnishes to the COUNTY: (i) a completed and properly executed COUNTY Voucher ; (ii) proof (copies of ads, invoices etc- not paid receipts or canceled checks) that the marketing and promotional opportunities were furnished to the COUNTY as required under this agreement; (iii) the performance report; ~~and~~ (iv) **the final budget for the event or special consideration as approved by the Occupancy Tax Committee;** (v) copies of receipts or other proof of expenditures (including copies of ads if such are submitted under section (ii) hereof), Sponsor has submitted or will submit to any other municipality (Town, Village or City) for reimbursement of costs associated with the event funded under this agreement. (*Note: that you may not submit the same receipts to the County and another municipality for reimbursement.*)

**or**

within twenty-seven (27) days of the occurrence of the first day of an EVENT that is planned to occur over a number of days, weeks or months, a portion of the amount payable under this agreement equal to the amount expended for promotion and marketing where the County Logo was used as identified in paragraph three (3) of this agreement not exceeding seventy-five percent (75%) of the amount payable under this agreement. The balance of the amount due under this agreement shall be payable at the conclusion of the EVENT upon SPONSOR furnishing (i) a completed and properly executed COUNTY Voucher ; (ii) proof (copies of ads, invoices etc-not paid receipts or canceled checks) that the marketing and promotional opportunities were furnished to the COUNTY as required under this agreement; ~~and~~ (iii) the performance report; ~~and~~ (iv) **the final budget for the event or special**

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**consideration as approved by the Occupancy Tax Committee.**

**6. COUNTY LIMITATION OF RESPONSIBILITY**

- A. SPONSOR acknowledges and agrees that the COUNTY other than providing the funding herein above described does not make any representations concerning: the adequacy, availability or suitability of the area, hotels, restaurants, attractions, entertainment venues, recreational opportunities, environment, roads, utilities, weather or any other matter of any kind or nature with regard to SPONSORS' EVENT . It is understood and agreed that these are matters that SPONSOR must undertake to examine and determine whether such is suitable, adequate, available or otherwise acceptable to SPONSOR. SPONSOR acknowledges that by execution of this agreement that it has made or has through the use of third party contractors have made such study, review, inspections and/or inquiries as it deemed necessary and is satisfied with regard to these issues.
- B. The COUNTY shall not be required to furnish any services or do any work under this agreement.
- C. Any and all other costs associated with the EVENT or SPONSOR's members in attending the EVENT shall, accordingly, be the responsibility of SPONSOR and/or its members. The COUNTY shall not be responsible for the payment of any and all consultant, broker or other services that may have been requested and agreed to by the SPONSOR.
- D. Nothing contained herein shall be deemed to change or limit the COUNTY's governmental responsibilities or obligations that are furnished to the general public.
- E. The provisions of this agreement shall not be construed to create a joint venture or partnership between the parties.

**7. SPONSOR OBLIGATIONS**

- A. The SPONSOR shall be responsible for the payment of any and all consultant, broker or other services that may have been requested and agreed to by the SPONSOR in connection with the selection of Warren County as the EVENT site.
- B. The SPONSOR shall coordinate the issuance of all licenses and permits required and ensure that all applicable licenses and permits and insurance certificates have been issued and acquired. The SPONSOR shall further ensure that all licenses or permittees have obtained required insurance coverage and submitted proof of such coverage at least ten (10) days prior to the EVENT. The SPONSOR shall have the obligation of compliance with Federal, State and Local Laws in connection with the EVENT and activities occurring in connection therewith.

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- C. In the event the SPONSOR or any guest or member of the public shall cause any damage to municipal property, the SPONSOR shall at its own expense and cost repair the premises and restore to the same condition as existed prior to the damage. Such repair and restoration shall be subject to approval and direction of the COUNTY or if applicable, such other governmental body or agency with control or ownership of the infrastructure so damaged.
- D. All garbage, refuse and debris resulting from the EVENT and other activities authorized by the SPONSOR shall be removed and properly disposed of by SPONSOR or the Vendors or SPONSORS of the other activities.
- E. The SPONSOR shall supply any necessary employees, workers and agents as may be necessary to support EVENT and activities in connection therewith.
- F. Any and all services, facilities, infrastructures and other costs associated with the EVENT or SPONSOR's members in attending the EVENT shall be the responsibility of SPONSOR and/or its members.

8. RULES/REGULATIONS

SPONSOR acknowledges and agrees that it will abide by and advise its members to abide by applicable local laws, rules and/or regulations of any local municipality or property owner with jurisdiction where the EVENT is held.

9. DEFEND, INDEMNIFY AND HOLD HARMLESS

The SPONSOR and all participating organizations authorized or organized by Sponsor shall defend, indemnify and hold the COUNTY harmless from and against any and all liability, damage, causes of action, claims, suits, penalties or judgments arising from injury to persons or property or from loss of life or property sustained by anyone whatsoever arising as a result of the EVENT activities of SPONSOR or the EVENT activities of Third party vendors, clubs or invitees of SPONSOR or authorized by SPONSOR which shall occur by reason of the negligent acts or wrongful acts, errors, omissions, negligence, incompetence, malfeasance and misfeasance of the SPONSOR and/or its authorized third party vendors, clubs or invitees .

10. INSURANCE

The SPONSOR shall, during the term of this Agreement, provide and maintain or cause to be provided and maintained a comprehensive general liability EVENT insurance naming the COUNTY as additional insured in the amount of not less than One Million Dollars (\$1,000,000) per occurrence for personal injury, death or property damage arising out of the EVENT or EVENT activities or SPONSOR acts or omissions. The SPONSOR shall further require all participating organizations, clubs, and other entities to likewise provide insurance coverage naming SPONSOR and the COUNTY as additional insureds. The failure of the COUNTY or its Boards, officers and/or employees to object to the contents of any certificate of insurance or absence of the same shall not be deemed a waiver of any and all rights held by the COUNTY. Concessions selling alcoholic beverages shall provide an insurance policy specifically including coverage for liquor law liability in an amount of not less than Five Hundred Thousand Dollars

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(\$500,000). Said certificate of insurance for liquor law liability shall be required only in the event that liquor is to be sold or otherwise dispensed during the EVENT. Certificates and/or other evidence of such insurance, as may be required by the COUNTY, shall be delivered to the County Attorney's Office ninety (90) days prior to the commencement of the EVENT, except that certificates and/or other evidence of insurance for third-party vendors or concession shall be delivered to the County Attorney three (3) days prior to the commencement of the EVENT.

All insurance policies issued hereunder shall name the COUNTY as an additional insured under such policy as its interest may appear, be an insurance policy from an A.M. Best rated secured New York State licensed insurer and contain not less than a ten (10) day notice of cancellation clause.

The SPONSOR shall secure compensation insurance and disability insurance for the benefit of such employees engaged under this Agreement as are by law required to be insured by SPONSOR under the provisions of the Workers' Compensation Law and New York State Disability Law. Proof of compensation and disability insurance shall be in the form(s) approved by the Workers' Compensation Board.

11. CANCELLATION OF EVENT - FORCE MAJEURE

The performance of this agreement is subject to acts of God, war, civil disorder, government regulation, disaster (including, but not limited to, fire, flood, severe weather and earthquake), strikes or work stoppages, labor disputes or threat thereof, terrorism or threat of terrorism: curtailment of transportation facilities which prevent or unreasonably delay at least 40% of the meeting attendees or any other situation making it commercially inadvisable, illegal, or impossible to provide the facilities or hold the EVENT. For the reasons aforesaid the SPONSOR may, upon such written notice as is practical, cancel the holding of the EVENT for the year when the reason arises which affects the holding of the EVENT as scheduled. In no event will the COUNTY be liable for any costs or other losses sustained by the SPONSOR's for a cancellation of the EVENT the reasons set forth herein. The mere lack of or adequacy of hotels, restaurants, or like facilities shall not be a basis upon which SPONSOR may exercise this cancellation clause. In the event that SPONSOR cancels the EVENT for the reasons allowed under this paragraph, the COUNTY shall pay up to fifty percent (50%) of the amount payable under paragraph four (4) of this agreement provided that SPONSOR provides the documentation required under said paragraph four (4).

12. NO THIRD PARTY BENEFIT

No person or entity other than the parties to this Agreement shall be entitled to rely on this Agreement, and this Agreement is not made for the benefit of any person or entity not a party hereto.

13. AUTHORITY TO BIND

SPONSOR represents that it has followed organizational procedures necessary and has the requisite authority to bind SPONSOR to this agreement.

14. GUARANTEE OF PERFORMANCE

The SPONSOR by the execution of this Agreement, guarantees complete performance of the terms and conditions of this Agreement, including any reasonable cost of any repair or restoration of the premises,

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removal of any garbage, refuse and debris and maintenance of the premises in a reasonable manner. Repair or restoration required hereunder is that defined as necessary or occasioned by damage or wear and tear beyond normal and reasonably expected wear and tear. With respect to SPONSOR, it is agreed by the parties that its officers, members, employees, agents and directors shall have no personal liability under this Agreement. Nothing contained herein shall be deemed to release the SPONSOR from liability arising as a result of this Agreement, or liability of any officer, member, employee, agent or director by reason of their own intentional or negligent act or omission.

15. ENTIRE AGREEMENT/AMENDMENT OR ALTERATION

The terms of this Agreement constitute the entire agreement between the parties and neither party shall be bound by oral representations not contained apart hereof. This agreement shall not be altered, amended or changed except by written Agreement signed and executed by the parties through their authorized officers.

16. CAPTIONS

The captions used in this document are for reference purposes only and shall not be deemed a term or condition of the Agreement.

17. NOTICES

Any notice, demand, request or other communication required or permitted by this Agreement, to be given by either party to the other, may be either personally delivered or sent by certified mail, properly addressed and prepaid, or by Federal Express or other nationally recognized overnight delivery service providing for receipt against delivery to the addresses of the parties set forth below:

If to the COUNTY:

Leisa Grant, Principal Account Clerk  
Tourism Department  
Warren County Municipal Center  
1340 State Route 9  
Lake George, New York 12845

If to SPONSOR:

with a copy  
(which shall not constitute notice) to:

Warren County Attorney  
Warren County Municipal Center  
1340 State Route 9  
Lake George, New York 12845  
Attention: Paul B. Dusek, Esquire

or to such other person as shall be designated in writing by any such party or person; and such notice or communication shall be deemed to have been given as of the date so delivered in person, three days after



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the date so mailed and the next business day after deposit with such overnight delivery service; *provided, however,* that all notices of any change of address shall be effective only upon actual receipt thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of the respective parties.

Approved as to Form:

COUNTY OF WARREN

\_\_\_\_\_  
1<sup>st</sup> Asst. Warren County Attorney

By \_\_\_\_\_  
DANIEL G. STEC, CHAIRMAN  
Board of Supervisors

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

SPONSOR

By \_\_\_\_\_

Date \_\_\_\_\_

