

TOURISM PROMOTION & VISITOR SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") entered into by and between the Sedona Chamber of Commerce & Tourism Bureau, hereinafter referred to as "SCC&TB" and the City of Sedona, a municipal corporation, hereinafter referred to as "City", this 11th day of April, 2017.

WITNESSETH

WHEREAS, the SCC&TB will initiate, implement, and administer a comprehensive sales and marketing program designed to attract visitors and meeting delegates to the City, thereby gaining revenues to the community and contributing to the overall economic growth of the Sedona business community and the City in general; and

WHEREAS, in recognition of the existing limitations on City infrastructure during peak season, and in an effort to mitigate the impacts of traffic congestion and crowds on the visitor experience and the quality of life for our residents, the parties mutually resolve to create a destination marketing program that emphasizes the attraction of visitors during the off-season and mid-week; and

WHEREAS, the SCC&TB and the City believe that tourism product development initiatives can help enhance and expand the destination's appeal to visitors and/or improve the quality of life for residents by mitigating some of the undesirable impacts of a robust tourist economy; and

WHEREAS, the City has adopted a 3.5% transient bed tax to be collected by transient lodging operators, with the intention that portions of the proceeds be used to develop a tourist and meetings promotional program, service visitors, and pursue tourism product development initiatives in Sedona; and

WHEREAS, pursuant to Sedona City Ordinance No. 2013-07, the City has elected to devote 55% of transient bed tax collections to the promotion of tourism and to allocate the use of said Tourism Promotion Funds by way of contract to a destination marketing organization (DMO); and

WHEREAS, the City and SCC&TB desire to continue their longstanding partnership and establish a general framework for future cooperative efforts, including the general procedures by which the SCC&TB will prepare and carry out tourism activities;

NOW, THEREFORE, in consideration of the foregoing, the City and the SCC&TB do mutually agree as follows:

1. ADMINISTRATION

- 1.1. In carrying out the terms of this agreement, the SCC&TB agrees to continue to follow all of its bylaws which are also incorporated, by reference, into this agreement.
- 1.2. The SCC&TB shall continue to operate as a 501(c)(6) non-profit corporation and be governed by a Board of Directors that has the ultimate authority for oversight and approval of the SCC&TB's programs.
- 1.3. The SCC&TB shall utilize an accounting system which will comply with generally

accepted accounting principles. The SCC&TB shall establish and maintain a line item budget that identifies expenditures from all funding sources.

- 1.4. The City hereby designates the Assistant City Manager or his/her designee as the City's representative and Contract Administrator. The Contract Administrator shall work with the SCC&TB in coordinating the execution of this Agreement. Any reports and correspondence from the SCC&TB shall be submitted through the Contract Administrator.

2. SCOPE OF TOURISM PROMOTIONAL ACTIVITIES

Required Activities.

- 2.1. Annual Work Session. In recognition of the City Council's fiduciary responsibility for the tax dollars that support tourism promotion activities, and their interest in providing input and policy direction in the setting of specific goals and objectives for tourism from year to year, a joint work session between the City Council and the SCC&TB Board of Directors or subcommittee thereof shall be held at least annually prior to the SCC&TB's development of the upcoming year's program of work, budget, and marketing and product development plans. During this session(s) the City Council will identify priorities and provide policy direction that will assist the SCC&TB in developing a budget, program of work, specific marketing strategies, and product development programs or projects that best align with City Council goals and objectives. This session(s) shall provide an opportunity to develop a coordinated tourism approach for the upcoming year, and shall be designed to promote dialogue between two partners with mutual interests, recognizing that tourism is a dynamic process requiring frequent evaluation, monitoring, and adaptation as conditions change.

This session, or sessions if necessary, shall take place no later than the end of January each year to allow for development of the tourism promotion program for the following fiscal year. The fully developed program, including the Destination Marketing and Development Plan and Fiscal Year Budget, will be brought back to Council for final approval prior to July 1 of each year.

Based on the input received during the annual joint meeting, SCC&TB shall perform the following Activities:

- 2.2. Destination Marketing and Tourism Product Development Committees. The SCC&TB shall manage the Marketing Committee and Tourism Product Development Committee (TPDC) who will have the responsibility to develop a clear understanding of existing strengths and weaknesses and how existing tourism products and activities are aligned with current and future visitor targets and with the overall Sedona brand. The SCC&TB is responsible for communicating the goals and objectives outlined in the annual meeting with the City Council to the Marketing Committee and TPDC so that the SCC&TB and its committees can develop marketing strategies and prioritize new product development initiatives in accordance with those goals.

2.3. Destination Marketing and Development Plan. SCC&TB shall prepare a Destination Marketing and Development Plan for submission to the City as follows:

2.3.1. No later than June 1 of each year during the term of this Agreement, SCC&TB shall deliver to the City a proposed Destination Marketing and Development Plan for the subsequent year. The Destination Marketing and Development Plan will be presented to City Council for final consideration prior to July 1 each year. If the Sedona City Council approves the proposed new Destination Marketing and Development Plan prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Destination Marketing and Development Plan shall be the Plan under this Agreement during the subsequent year. If the City does not approve the new Destination Marketing and Development Plan, then the most current approved Plan will remain in effect until such time a new Destination Marketing and Development Plan is approved.

2.3.2. City staff and SCC&TB shall conduct a semi-annual review of the objectives, expenditure estimates, estimated effects and other aspects of the Marketing Plan.

2.3.3. The parties understand and agree that administrative changes to the annual Destination Marketing and Development Plan may be necessary in order to react to new opportunities, resource availability, industry trends, price increases, etc. Any such changes will be reported in quarterly reports to the City. For example, these factors may necessitate changes to individual media and sales activities listed in the schedule attached to the annual Destination Marketing and Development Plan that do not otherwise change the Plan such as advertising in a different magazine or changing sales calls to a different city.

2.3.4. Destination Marketing. The Destination Marketing and Development Plan shall include, but not be limited to, the following marketing components:

2.3.4.1 SCC&TB shall promote Sedona as a travel destination using major tourist-oriented festivals, competitions and other events that advance the Marketing Objectives as part of an overall marketing program.

2.3.4.2 SCC&TB shall carry out marketing communications by implementing marketing strategies that position Sedona as a destination and that generate leisure and business travel from individual, meeting, and leisure group markets. Those strategies are: advertising; event and consumer promotions; database relationship marketing; public relations; web site maintenance, enhancements, and development; and on-line marketing program and promotions.

2.3.4.3 SCC&TB shall carry out sales and marketing activities to tour

operators, travel agents, incentive buyers, and receptive operators serving high-end leisure groups, and individual travelers in target markets identified by SCC&TB in order to promote visitation to Sedona.

2.3.4.4 SCC&TB shall carry out programs that reinforce relationships with existing clients, and that seek out sources of new business from small to medium size corporate groups, incentive travel programs, and key industry association meetings.

2.3.5 Product Development. The Destination Marketing and Development Plan shall address Product Development as follows:

2.3.5.1 The SCC&TB and TPDC shall consider enhancing existing products, identifying new areas of development focus that would address future opportunities, and/or directing resources when necessary and appropriate towards ameliorating some of the negative impacts of high visitation.

2.3.5.2 The SCC&TB and TPDC shall identify a range of potential options for product development and recommend product development programs and/or projects to pursue in the upcoming year.

2.3.5.3 From year to year, the SCC&TB shall determine what resources are needed for visitor services and destination marketing in order to pursue the policy goals established by the City Council. The remainder will be allocated for product development initiatives.

2.3.5.4 The SCC&TB shall meet with the City Manager and Contract Administrator no later than May 1 of each year to review the product development recommendations for the upcoming fiscal year. The SCC&TB, the City Manager and Contract Administrator shall agree upon a final list of recommendations that work within anticipated funding.

2.3.5.5 Depending on the nature of each project/program, those projects/programs and corresponding funding allocations shall be directed to either the SCC&TB or the City depending on which organization would be better suited to execute that project or program. For example, projects such as new parking, transportation, beautification, wayfinding, and public amenities may be more appropriate for the City to undertake given its in-house resources and experience with executing capital projects. Other destination management projects or programs that provide enhancements to the visitor experience, or that require leveraging or heavy participation from the SCC&TB partners, may be more appropriately administered by the SCC&TB.

2.3.5.6 Project/program assignments shall be determined annually on a case by case basis through mutual agreement between the City and the SCC&TB and the final list of product development recommendations, including project/program assignment, shall be memorialized in the Destination Marketing and Development Plan and approved by Council in accordance with Section 2.3.1.

2.4 Visitor Services. The SCC&TB shall maintain and staff a Visitor Center at 331 Forest Road in Sedona, or other mutually agreed upon location within the City. The Visitor Center will be open to the public seven days a week to answer all inquiries for general information relating to Sedona. The Visitor Center will be open no less than 57 hours per week, except on weeks that include Christmas, Thanksgiving, or the New Year's holiday. Visitor Center service costs that will be funded through the 55% bed tax allocation to the SCC&TB governed by this contract, include, but are not limited to:

- a) Utilities
- b) Telephone
- c) Facility Repairs and Maintenance
- d) Insurance
- e) Wages and Benefits for paid visitor center staff
- f) Supplies and Copier
- g) Rent
- h) Costs for managing sales (maps, Red Rock Passes, etc.)
- i) Postage, mailing costs, freight
- j) Fulfillment piece(s), such as
 - i. Sedona Brochure
 - ii. Sedona Community Profile
 - iii. List of Schools and Churches
 - iv. List of Clubs and Organizations
 - v. Things to See and Do
 - vi. Hiking Maps and Guides
 - vii. Area Maps

The City will provide, as a separate expense to the City, an appropriate level of janitorial service for the public restrooms at the Visitor Center.

2.5 Performance Metrics. As part of the quarterly and annual reporting, the SCC&TB shall report on the following metrics, which will be used as one indicator of the effectiveness of marketing programs and activities. Metrics should be tracked and reported by month (or as made available by the City) to assess seasonal changes and influences:

- Sales Tax Collections
- Bed Tax Collections
- Annual Daily Room Rate for Hotels (ADR)
- Hotel Occupancy

- Number of visitors assisted in-person at the visitor center, and/or electronically
- Visitor service satisfaction measured by survey at the Visitor Center, and/or electronically

2.5.1 Changes to the Performance Metrics shall be mutually agreed upon by SCC&TB and City, reflected in the annual Destination Marketing and Development Plan, and adopted by Council through the approval of the annual Destination Marketing and Development Plan.

3. TOURISM BUREAU FEES

- 3.1. In order to maintain fairness between the businesses inside and outside the city limits, the SCC&TB will maintain a fee structure that assesses every tourism level partner outside of the city limits at a higher rate than in-city members.
- 3.2. In order to maintain fairness between the Lodging industry inside and outside the city limits, the SCC&TB will require that partners outside the city limits pay increased fees for leads generated by the SCC&TB.

4. ANNUAL BUDGET

- 4.1. The SCC&TB shall submit to the City Council an annual line item contract budget approved by the SCC&TB's Board of Directors, by June 1 of each year. The proposed line item contract budget shall:
- a.) Include a description of proposed programs and staffing requirements along with their respective budgeted amounts. The budget will delineate between those City funds proposed to be spent on destination marketing, product development, and visitor services. Within each of these categories, SCC&TB shall identify resources for direct costs such as materials and labor and for indirect costs such as overhead.
 - b.) List all funds that SCC&TB proposes to receive or expend under this Agreement. The total amount of Bed Tax Funds that SCC&TB proposes to receive during the following year shall be clearly listed by itself on a single separate line of the proposed contract budget. SCC&TB's proposed contract budget shall also list all funds that SCC&TB otherwise proposes to receive or expend during the year. The proposed SCC&TB contract budget shall clearly indicate which funds SCC&TB anticipates receiving from City under this Agreement and which funds SCC&TB anticipates receiving from other sources.
 - c.) Indicate which product development funds shall be retained by the City and which product development funds shall be retained by the SCC&TB to execute product development initiatives.
- 4.2. The final Contract Budget for the following fiscal year shall be presented to the City Council for final consideration prior to July 1 each year, at the same time as the Destination Marketing and Development Plan.

5. ANNUAL AUDIT AND FINANCIAL REVIEW

- 5.1. For the first year of the contract, Fiscal Year 2017-2018, the SCC&TB shall have an independent certified public accountant (CPA) complete a full audit of its financial statements. The SCC&TB shall pay for all services rendered by the CPA. All reports and documentation (financial statements, compliance and management letters, internal control documentation and opinion letters) from the CPA shall be submitted to the Assistant City Manager one hundred eighty (180) days after the end of the fiscal year (by 12/31/2018).
- 5.2. For the remaining years of the contract, the City of Sedona reserves the right to require the SCC&TB conduct a full audit. Should the City require the SCC&TB to conduct a full audit for any subsequent fiscal years, the City Council shall indicate such at the annual meeting so that the SCC&TB may incorporate the expenditure for the audit into the upcoming fiscal year budget. The SCC&TB shall pay for all services rendered by the CPA. All reports and documentation (financial statements, compliance and management letters, internal control documentation and opinion letters) from the CPA shall be submitted to the Assistant City Manager one hundred eighty (180) days after the end of the fiscal year.
- 5.3. If the City does not request the SCC&TB conduct a full audit, the SCC&TB shall, at a minimum every year, have an independent CPA conduct an annual review of its financial statements. The SCC&TB shall pay for all services rendered by the CPA. All reports and documentation (financial statements, notes to financial statements, independent accountant's review report) from the CPA shall be submitted to the Assistant City Manager hundred-eighty (180) days after (by 12/31 of each year).
- 5.4. With reasonable notice, the City shall have the right to audit the books of the SCC&TB for the purpose of confirming the expenditures of City funds.

6. REPORTS

- 6.1. The SCC&TB agrees to report on the performance of its programs by submitting a report to the City within ninety (90) days of end of each of the first three quarters of the fiscal year, i.e. September 30; December 31; and March 31. A final annual report will be produced and submitted to the City within one-hundred-twenty (120) days after the close of the fiscal year (June 30) and shall include an analysis of the effectiveness of the various programs.
- 6.2. At the request of the City Manager and/or Contract Administrator the SCC&TB will provide periodic oral reports to the City Council.

7. PAYMENT OF FUNDING

- 7.1. City Funding. City's payment of the Tourism Promotion Funds shall be subject to the following:
 - 7.1.1 All Tourism Promotion Funds and other City support SCC&TB expenditures and activities under this Agreement shall comply with the approved Contract Budget.

- 7.1.2 The total amount of Tourism Promotion Funds that City shall provide under this Agreement for each year shall be equal to fifty-five percent (55%) of the Bed Tax Funds estimated to be collected during the year, to be paid in bi-annual installments. The first shall be paid within 30 days of budget approval and the second by January 1 of each fiscal year. The Actual Bed Tax Funds Collected, as articulated in Section 7.2, will be included in the first bi-annual payment. Should the Actual Bed Tax Funds Collected, as articulated in Section 7.2, require a decrease to the following year's funding, that decrease will be taken from the second bi-annual payment.
- 7.1.3 No later than thirty (30) days before City's payment of an installment of Tourism Promotion Funds is due, SCC&TB shall deliver to City an invoice for the amount.
- 7.1.4 City and SCC&TB shall meet semi-annually to discuss actual Bed Tax Funds. No later than April 10 each year, City shall provide to SCC&TB an estimate of the total amount of Bed Tax Funds that City anticipates City will collect during the following fiscal year. SCC&TB shall have an opportunity to provide input about City's estimate before City provides the estimate to SCC&TB under this Agreement. SCC&TB's proposed contract budget shall be based on City's estimate.
- 7.2. Actual Bed Tax Funds Collected. City's payments under this Agreement shall be adjusted based on actual Bed Tax Funds Collected as follows:
- 7.2.1. By December 15 the Contract Administrator will notify the SCC&TB of the results of the reconciliation of actual bed tax receipts for the previous fiscal year.
- 7.2.2. Those funds will become part of the annual budget for the following fiscal year and the following fiscal year budget and contract amount will be increased or decreased to adjust for actual collections for the previous fiscal year. For example, for the FY2017 reconciliation (fiscal year ending June 30, 2017), the Contract Administrator will notify the SCC&TB by December 15, 2017 of the actual bed tax receipts per the FY2017 financial audit. This will occur during fiscal year 2018. The FY17 reconciliation will become part of the FY19 budget-setting process and be reflected in the FY19 budget approved by Council prior to July 1, 2018.
- 7.3. Reconciliation of Product Development Funds assigned to City Should the City have unspent funds from any Product Development initiatives assigned to the City, the City shall remit those unspent funds to the SCC&TB for reassignment to other future projects/programs within 30 days of completion of the project. If a project costs more than the budget allocation, the City, upon approval of the City Council, may temporarily cover the overage through its General Fund Contingency. The overage amount would then be budgeted as part of the next year's product development budget, the City would retain those funds, and the General Fund reimbursed.

8. INDEMNIFICATION AND INSURANCE PROVISIONS

8.1. The SCC&TB agrees to indemnify, defend and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, demands, expenses, subrogation's, attorney's fees or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of either (1) the SCC&TB' s performance of the terms of this contract, or (2) any of the SCC&TB' s acts or omissions in its capacity as a DMO.

9. TERM

9.1. The term of this Agreement is from July 1, 2017 to June 30, 2024 and shall be automatically extended in two-year increments unless either party gives written notice to the other, on or before May 1 of its intent not to renew for the following year. In addition, either party may terminate this Agreement, without penalty, upon 60 days written notice to the other party. In the event of such early termination, the reimbursement provisions of Paragraph 9.2 shall apply.

9.2. If a party defaults in the performance of any of the covenants, agreements, terms or conditions of this Agreement and such default is not cured within 30 days after notice of such default is given by the non-defaulting party, or such longer period as may be necessary provided the defaulting party has commenced curing within such 30 days and diligently pursues such curing to completion, the non-defaulting party shall have the right, at its option, to immediately terminate this Agreement, whereupon it shall have no further obligation or liability under this Agreement, or to seek full and adequate relief by injunction or other legal and equitable remedies (or all of the above). In the event of termination of the contract, the city will reimburse the SCC&TB for all SCC&TB prepayments of future year contracted items and the SCC&TB will turn those items over to the city's representative. Should the SCC&TB have unspent proceeds from the City's pre-payment of contract installments, the SCC&TB will reimburse the City for the pro-rated amount of the prepayment less the expenses addressed in the preceding sentence or other outstanding encumbrances, and any other unspent City funding. For example, should the contract be terminated on December 1, the SCC&TB has already been pre-paid for the period beginning July 1 and ending December 31. The SCC&TB would reimburse the City for 1/6 of the first installment to repay the City for services not provided in December, less any prepayments or outstanding encumbrances, plus any other unspent City funds.

10. LEGAL COMPLIANCE

10.1. The SCC&TB agrees to comply with all Federal, State, and City laws or regulations applicable to the SCC&TB's business or services or to the performance of these services.

11. INDEPENDENT CONTRACTOR

11.1. The parties agree that the SCC&TB provides specialized services and enters this contract with the City of Sedona as an independent contractor. Nothing in this contract shall be construed to constitute the SCC&TB's, nor any of its personnel,

volunteers, or directors, as agents, employees, or representative of the City. As an independent contractor, the SCC&TB is solely responsible for all labor and expenses in connection with this agreement and for any and all damages that may arise during the operation of this agreement.

- 11.2. The SCC&TB shall carry appropriate insurance and shall indemnify and hold the City and its officials, employees, and agents harmless from any and all claims, demands actions, and causes of action (including administration or alternative dispute resolution proceedings) penalties or costs (including attorney's fees) or liability for damages for personal injury or property damage resulting from the acts of omissions of the SCC&TB's officers, directors, agents, employees, or volunteers, in connection with the agreement or in any way arising from the activities or services of the SCC&TB as set forth in this agreement. The SCC&TB shall provide a copy of the insurance certificate, which lists the City of Sedona as an additional insured, to the City Manager's Office prior to the first installment release.
- 11.3. It is understood and agreed that the SCC&TB is free to contract with other parties or to otherwise provide additional services.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first given above.

Sedona Chamber of Commerce & Tourism Bureau,
Inc., an Arizona non-profit corporation

By: _____
Lonnie Lillie
Its: Chairman of the Board

By: _____
Jennifer Wesselhoff
Its: President & CEO

CITY OF SEDONA,
An Arizona municipal corporation

By: _____
Sandra J. Moriarty, Mayor

ATTEST:

Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM BY
CITY ATTORNEY'S OFFICE: /

Robert L. Pickels, Jr., City Attorney

CITY CONTRACT ADMINISTRATOR:

Karen Daines, Assistant City Manager

CITY MANAGER:

Justin Clifton, City Manager