

DESTINATION MARKETING & VISITOR SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") entered into by and between the Sedona Chamber of Commerce & Tourism Bureau, hereinafter referred to as "SCoC&TB" and the City of Sedona, a municipal corporation, hereinafter referred to as "City", this 10th day of June, 2014.

WITNESSETH

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

WHEREAS, the SCoC&TB believes that tourism product development initiatives could help enhance and expand the destination's appeal to visitors and to enhance the quality of life for residents and the SCoC&TB will have the responsibility to develop a clear understanding of how existing and potential new tourism products are aligned with current and future visitor targets and brand alignment; and

WHEREAS, the City originally adopted a 3% transient bed tax to be collected by motel and hotel operators, with the intention that portions of the proceeds therefrom be used to develop a tourist and meetings promotional program in Sedona; and

WHEREAS, in September, 2013 the City adopted an increase in the transient bed tax from 3% to 3.5%, which became effective January, 2014; 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 funds by way of contract to a destination marketing organization (DMO); and

WHEREAS, the City and SCoC&TB desire to establish a general framework for future cooperative efforts, especially the general procedures by which the SCoC&TB will prepare and carry out tourism activities;

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

1. ADMINISTRATION

1.1. In carrying out the terms of this agreement, the SCoC&TB agrees to continue to follow all of its bylaws which are also incorporated, by reference, into this agreement.

1.2. The SCoC&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 SCoC&TB's programs.

Page 71.3. The SCoC&TB shall utilize an accounting system which will comply with generally accepted accounting principles. The SCoC&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 SCoC&TB in coordinating the execution of this Agreement. Any reports and correspondence from the SCoC&TB shall be channeled through the Contract Administrator.

2. SCOPE OF TOURISM PROMOTIONAL ACTIVITIES

Required Activities. SCOC&TB shall perform the following Activities:

2.1. Destination Marketing Plan. Each year, SCoC&TB shall prepare a "Destination Marketing Plan" (the "Marketing Plan") for submission to the City as follows:

2.1.1. Initial Marketing Plan. The City hereby approves the proposed Marketing Plan attached hereto as **Exhibit "A"** as the Marketing Plan for year 2014/2015.

2.1.2. Marketing Plan Approval. No later than June 1 of each year during the term of this Agreement, (including the last year) SCoC&TB shall deliver to the City a proposed Marketing

Plan for the subsequent year. If the Sedona City Council approves the proposed new Marketing Plan prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Marketing Plan shall be the Marketing Plan under this Agreement during the subsequent year. If the City does not approve the new Marketing Plan, then the current Marketing Plan will remain in effect.

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

2.1.4. Marketing Plan Changes. The parties understand and agree that Non-Substantive changes to the Marketing 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 Marketing Plan that do not otherwise change the Marketing Plan such as advertising in a different magazine or changing sales calls to a different city.

2.2. Performance Standards. Each year SCoC&TB shall prepare a list of specific performance criteria (the "Performance Standards") for Marketing Activities as
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follows:

2.2.1. Initial Performance Standards. City approves the proposed performance standards attached hereto as **Exhibit "B"** as the Performance Standards for year 2014/2015.

2.2.2. Performance Standards Approval. No later than June 1 of each year during the term of this Agreement (including the last year), SCoC&TB shall deliver to City proposed performance standards for the subsequent year. If Sedona's city council approves the proposed new performance standards prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new performance standards shall be the Performance Standards under this Agreement during the subsequent year. Otherwise the current Performance Standards will remain in effect.

2.2.3. Performance Standards Review. City and SCoC&TB shall conduct a semi-annual review of the objectives, expenditure estimates, estimated effects and other aspects of the Performance Standards.

2.2.4. Performance Standards Changes. Changes to the Performance Standards shall be mutually agreed upon by SCoC&TB and City's contract administrator.

2.3. Event Marketing. SCoC&TB shall promote Sedona as a travel destination using major tourist-oriented festivals, competitions and other events that advance the Marketing Objectives (the "Events") as part of an overall marketing program.

2.4. Program of Marketing Activities. SCoC&TB shall use the Marketing Funds to carry out the following program of Marketing Activities as set out in the Marketing Plan:

2.5. Communications. SCoC&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.

2.6. Tourism Industry Sales. SCoC&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 SCoC&TB in order to promote visitation to Sedona.

2.7. Meetings and Group Sales. SCoC&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.

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2.8. Conduct of Marketing Activities. SCoC&TB shall conduct the Marketing Activities in conformance with the Marketing Plan and the Performance Standards.

2.9. Product Development: The SCoC&TB will manage the Tourism Product Development Committee (TPDC) who will have the responsibility to develop a clear understanding of how existing tourism products are aligned with current and future visitor targets. The SCoC&TB is responsible for coordinating the TPDC to prioritize new product development initiatives, to consider enhancing existing products, to identify areas of product strengths and weaknesses and identify new areas of development focus that would address future opportunities. The SCoC&TB and TPDC will develop alternatives for resources/tools to act on new priorities including identifying a range of options for product development resources and recommend approaches to pursue those holding greatest potential.

A line item for product development is included in the FY2015 contract budget. SCoC&TB will come back to Council with recommendations and a proposed plan for how to spend product development funds for the 2015 fiscal year by Nov 15, 2014. This plan establishes the initial product development program. In the two subsequent years of this contract (FY16 and FY17) a product development budget and recommended strategies and tactics for meeting product development goals will be provided by June 1 at the same time as the Marketing Plan and performance standards documents.

2.10. Visitor Services: The Chamber 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. City funded Visitor Center service costs 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.

3. TOURISM BUREAU FEES

3.1. In order to maintain fairness between the businesses inside and outside the city limits, the SCoC&TB will establish a membership fee structure that assesses every Tourism Bureau member 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 SCoC&TB will require that members outside the city limits pay increased fees for leads generated by the SCoC&TB.

3.3. Since the SCoC&TB has not yet finalized the new fee structure, the SCoC&TB will come back to Council with the new fee structure and implementation timeline for the new fees by Nov 15, 2014.

4. ANNUAL BUDGET

4.1. The SCoC&TB shall submit to the City Council an annual line item budget approved by the SCoC&TB's Board of Directors, by June 1 of each year. Said budget will 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 spend on destination marketing, product development, and visitor services.

5. ANNUAL AUDIT AND FINANCIAL REVIEW

5.1. For the first year of the contract, Fiscal Year 2014-2015, the SCoC&TB shall have an

independent CPA complete a full audit of its financial statements. The SCoC&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 hundred-eighty (180) days after the end of the fiscal year (by 12/31/2015).

5.2. For the remaining two years of the contract, Fiscal Years 2015-2016 and 2016- 2017, should they be renewed, the SCoC&TB shall have an independent CPA conduct an annual review of its financial statements. The SCoC&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- twenty (120) days after the end of the 2015-2016 and 2016-2017 fiscal years (by 10/31 of each year).

5.3. The City also reserves the right to require a full audit, in addition or in lieu of the Page 11 annual financial review, for the remaining two years. Should the City require the SCoC&TB to conduct a full audit for either or both of those subsequent fiscal years, the City's Contract Administrator shall notify the SCoC&TB of that requirement a minimum of 60 days prior to the end of the fiscal year for which an audit is being required.

5.4. With reasonable notice the City shall have the right to audit the books of the Chamber for the purpose of confirming the expenditures of City funds.

6. REPORTS

6.1. The SCoC&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. The final report due date is extended thirty days to accommodate the inclusion of the year end audited financial figures.

6.2. At the request of the City Manager and/or Contract Administrator the SCoC&TB will provide periodic oral reports to the City Council.

7. FUNDING

7.1. City Funding. City's payment of the Tourism Promotion Funds shall be subject to the following:

7.1.1

7.1.2

7.1.3

7.1.4

7.1.5

Contract Budget. All Tourism Promotion Funds and other City support and all Marketing Activities and other SCoC&TB expenditures and activities shall comply with a budget (the "Contract Budget") as follows:

The total amount of Tourism Promotion Funds that City shall provide under this Agreement (the "Contract Amount") 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 paid by August 15 and February 15 of each fiscal year.

No later than thirty (30) days before City's payment of an installment of Tourism Promotion Funds is due, SCoC&TB shall deliver to City an invoice for the amount.

City approves as the Contract Budget for year 2014/2015 the portions of the proposed budget attached hereto as **Exhibit "C"** that are shown in such exhibit as totaling the Contract Amount.

No later than June 1 of each year during the term of this Agreement, SCoC&TB shall deliver to City of Sedona a proposed Contract Budget of all funds to be received or expended by SCoC&TB during the following year as follows:

a) SCoC&TB's proposed contract budget shall list all funds that SCoC&TB proposes to receive or expend under this Agreement. The total amount of Bed Tax Funds that SCoC&TB proposes to receive during the following year (the "Proposed Amount") shall be clearly listed by itself on a single separate line of the proposed contract budget. SCoC&TB's proposed contract budget shall also list all funds that SCoC&TB otherwise proposes to receive or expend during the year. The proposed SCoC&TB contract budget shall clearly indicate which funds SCoC&TB anticipates receiving from City under this Agreement and which funds SCoC&TB anticipates receiving from other sources.

7.2. City and SCoC&TB shall meet semi-annually to discuss actual Bed Tax Funds. No later than April 10 each year, City shall provide to SCoC&TB an estimate of the total amount of Bed Tax Funds that City anticipates City will collect during the following fiscal year. SCoC&TB shall have an opportunity to provide input about City's estimate before City provides the estimate to SCoC&TB under this Agreement. SCoC&TB's proposed contract budget shall be based on City's estimate.

7.3. Actual Bed Tax Funds Collected. City's payments under this Agreement shall be adjusted based on actual Bed Tax Funds Collected as follows:

7.4. By December 15 the Contract Administrator will notify the SCoC&TB of the results of the reconciliation of actual bed tax receipts for the previous fiscal year. The current fiscal year contract amount will be increased or decreased to adjust for actual collections for the previous fiscal year. Such changes in annual contract amount shall result in corresponding changes to the Contract Budget. SCoC&TB shall propose the Contract Budget changes, which shall require approval by City contract administrator. The adjustment for prior year actual collections will be made by increasing or decreasing the second bi-annual (February) installment of the current fiscal year contract.

8. HOLD HARMLESS AND INSURANCE PROVISIONS

8.1. The SCoC&TB agrees to 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 SCoC&TB's performance of the terms of this contract, or (2) any of the SCoC&TB's acts or omissions in its capacity as a DMO.

9. TERM

9.1. The term of this Agreement is from July 1, 2014 to June 30, 2015 and shall be automatically extended for two additional years 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,

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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 early termination of the city's contract with the chamber, the city will reimburse the SCoC&TB for all SCoC&TB prepayments of future year contracted items and the SCoC&TB will turn those items over to the city's representative. Should the SCoC&TB have unspent proceeds from the City's prepayment of contract installments, the SCoC&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. For example, should the contract be terminated on December 1, the SCoC&TB has already been pre-paid for the period beginning July 1 and ending December 31. The SCoC&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.

10. LEGAL COMPLIANCE

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

11. INDEPENDENT CONTRACTOR

11.1. The parties agree that the SCoC&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 SCoC&TB's, nor any of its personnel, volunteers, or directors, as agents, employees, or representative of the City. As an independent contractor, the SCoC&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 SCoC&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 SCoC&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 SCoC&TB as set forth in this agreement. The SCoC&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.

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11.3. It is understood and agreed that the SCoC&TB is free to contract with other parties or to otherwise provide additional services.

[SIGNATURES ON THE FOLLOWING PAGE]

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

ATTEST:

Susan L. Irvine, City Clerk

APPROVED AS TO FORM BY CITY ATTORNEY'S OFFICE:

Mike Goimarac, City Attorney

CITY CONTRACT ADMINISTRATOR:

Karen Daines, Assistant City Manager

CITY MANAGER

Tim Ernster, City Manager

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

By: _____ Joel Gilgoff

Its: Chairman of the Board

By: _____ Jennifer Wesselhoff

Its: President & CEO

CITY OF SEDONA, An Arizona municipal corporation

By: _____ Robert M. Adams, Mayor

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