



City of Sonora

"Queen of the Southern Mines"

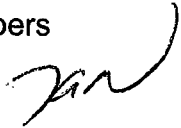
94 North Washington Street
Sonora, California 95370

City Hall	
Administration	532-4541
Community Development	532-3508
Finance	532-4541
Human Resources	588-8946
Opera Hall	532-7725
Special Programs	532-7725
Fire	532-7432
Police	532-8143
Public Works	532-2922
Cemetery	532-4492

Area Code 209
www.sonoraca.com

DATE: January 16, 2018

TO: Honorable Mayor and Council Members

FROM: Timothy A. Miller, City Administrator 

SUBJECT: Tourism Promotion Agreement and Marketing Funds/Sponsorship Program

Background

In 1983, members of the Tuolumne County Lodging Association proposed and supported an increase in the transient occupancy tax (TOT) from 6% to 8%. The TOT was subsequently increased and the County of Tuolumne and City of Sonora entered into an agreement with the Tuolumne County Visitor's Bureau (TCVB). That agreement called for 25% of the 8% total TOT to go to the TCVB for the purpose of increasing tourism throughout all areas of the unincorporated County of Tuolumne and within the City of Sonora.

On June 8, 2010, the voters of both the County and City approved another increase in the TOT from 8% to 10% to ensure that visitors to the community helped pay a greater share of the costs associated with the governmental services they utilize. Since implementation of the voter approved TOT increase in 2010, 25% of the 10% total TOT has been provided to the TCVB by the County and City that maintained the same allocation as the original tourism agreement

Discussion

The current Agreement needs to be updated in order to: 1) reflect that the TOT rate was increased from 8% to 10% in 2010; 2) memorialize the current practice of transferring 25% of the current 10% TOT collected to the TCVB; and 3) add provisions that provide greater input from and accountability to the City and County. Attachment A is the proposed new agreement amongst the TCVB, County and City.

The main changes contained in the new agreement are as follows:

- Establishes a fixed term that extends from the last date signed by all parties (planned for January 16, 2018) to June 30, 2022 (roughly 4½ years). Any extension must be negotiated and approved by all three parties.
- Clarifies that the allocation of 25% of TOT collections to the TCVB pertains to the current 10%.
- Establishes that 1 City Council member and 1 County Board member can sit as “Advisors” to the TCVB Board. Advisors are defined as enjoying all the rights and privileges of a TCVB Board member with the exception that they cannot vote.
- Provides for advance City and County input on TCVB’s draft 2 year marketing plans and consideration of agency comments by the TCVB Board before adopting final plans.
- Requires annual reports by the TCVB submitted to the City and County within two months of the end of the TCVB’s fiscal year. The TCVB’s fiscal year ends in June which will require reports before the end of August of each year.

The parties also agreed that new approaches to marketing should be further encouraged. To that end, the TCVB has developed a Letter of Understanding of its intent to operate a Matching Marketing Funds/Sponsorship Program. The program is designed to support countywide promotional opportunities that bring new and returning visitors to Tuolumne County. The TCVB is committed to this “Trial Marketing Program” for five years in the amount of up to \$75,000 annually. A copy of the Letter of Understanding outlining the Trail Marketing Program is contained as Attachment B. This program does not require any action by either the City or County.

The new Tourism Promotion Agreement was developed by CAO Craig Pedro, City Administrator Tim Miller and TCVB Executive Director Lisa Mayo with input from Supervisor Randy Hanvelt, Mayor Connie Williams and TCVB President Shirley Sarno.

TCVB Executive Director Lisa Mayo will be available at the meeting to discuss the new Tourism Promotion Agreement and Trial Marketing Program.

Recommendation

It is recommended that the City Council approve the attached Tourism Promotion Agreement amongst the City of Sonora, County of Tuolumne and Tuolumne County Visitor’s Bureau.

Attachment A

Tourism Promotion Agreement

TOURISM PROMOTION AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2018, by and between the TUOLUMNE COUNTY VISITORS BUREAU, a California non-profit mutual benefit corporation, hereinafter referred to as "TCVB", the COUNTY OF TUOLUMNE, a political subdivision of the State of California, hereinafter referred to as "County", and the CITY OF SONORA, a municipal corporation, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, in 1983, members of the Tuolumne County Lodging Association proposed and supported an increase in the transient occupancy tax (TOT) from 6% to 8%. The County and City thereafter provided 25% of the 8% total TOT to the TCVB for the purpose of increasing tourism throughout all areas of the unincorporated County and within the City of Sonora; and

WHEREAS, on June 8, 2010, the voters of both the County and City approved another increase in the TOT from 8% to 10% to ensure that visitors to the community helped pay a greater share of the costs associated with the governmental services they utilize; and

WHEREAS, since implementation of the voter approved TOT increase in 2010, 25% of the 10% total TOT has been provided to the TCVB by the County and City in an effort to maintain the spirit of the original tourism agreement; and

WHEREAS, the TCVB, County and City desire to enter into a new Agreement that incorporates the TOT increase approved in 2010 and updates responsibilities amongst all parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM:

The term of the Agreement shall commence on the date first herein referenced above and continue until June 30, 2022, unless cancelled by any party giving ninety (90) days written notice to the other parties.

County and/or City may send written notice to TCVB if TCVB fails to comply with any term or condition of this Agreement. The written notice shall include a description of TCVB's default. If TCVB fails to cure the default within thirty (30) days of the date notice was sent, the City and/or County may immediately terminate this Agreement.

- 2.** Should TCVB default in the performance of this Agreement or materially breach any of its provisions, County and/or City, at its option, may terminate this Agreement by giving written notification to TCVB. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required

services in a timely manner, willful destruction of County and/or City property, dishonesty, or theft.

3. TCVB RESPONSIBILITIES:

- A. TCVB shall dedicate itself to maximizing tourism to and throughout all areas of the unincorporated County of Tuolumne and within the City of Sonora. This will involve marketing both outside and inside of the County. Marketing outside of the County is intended to attract visitors to the County. Marketing inside of the County is intended to inform visitors of the many opportunities available to them once in the community and thus enhance visitation once here and encourage return visits.
- B. TCVB shall prepare two-year marketing plans and align its annual budgets and programs consistent with those plans.
- C. TCVB shall submit drafts of its two-year marketing plans and budgets to the County and City for review and comment no later than April of each year prior to adoption of same. The TCVB shall consider County and City comments when adopting final plans and budgets no later than June of each year.
- D. TCVB shall provide annual reports to the County and City regarding: 1) the delivery and accomplishment of its prior year marketing plan; 2) delivery and performance on its prior year budget; and 3) the most recent financial reports (e.g. balance sheet and profit and loss statement). These reports will be given no later than August of each year.
- E. TCVB shall include one representative each from the County and City to participate as Advisors to its governing board. County and City Advisors will be afforded the same rights and courtesies as those extended to TCVB Board members except they will not have the right to vote on TCVB governing board matters.

4. COUNTY AND CITY RESPONSIBILITIES:

- A. County and City shall provide comments on draft marketing plans and budgets as outlined in Section 2.C. above within thirty (30) days of receipt of same.
- B. County and City shall appoint representatives to serve as Advisors to the TCVB governing board as outlined in Section 2.E. above.
- C. In consideration of TCVB's services outlined in Section 2 above, County and City shall transfer to TCVB those sums equivalent to 25% of the current 10% TOT each collect. Said sums shall be transferred on or before the last working day of January, April, July and October, covering the prior calendar quarter (i.e. December 31, March 31, June 30 and September 30).

5. NOTICE

Any and all notices, reports or other communications to be given to County, City or TCVB shall be given to the persons representing the respective parties at the following addresses:

County	City	TCVB
County Administrator County of Tuolumne 2 South Green Street Sonora, CA. 95370	City Administrator City of Sonora 94 N. Washington Street Sonora, CA. 95370	Executive Director TCVB 193 S. Washington Street Sonora, CA. 95370

6. INDEPENDENT CONTRACTOR

TCVB understands that it, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the County or City. TCVB shall obtain no rights to retirement benefits or other benefits which accrue to County's or City's employees, and TCVB hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by TCVB are performing in that capacity for and on behalf of TCVB and not the County or City. The County and City shall not be obligated in any way to pay any wage claims or other claims made against TCVB by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

7. INSURANCE

- a. TCVB shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County and City. TCVB shall provide notice to the County and City by registered mail, return receipt requested, thirty (30) days prior to cancellation or material change for all of the following stated insurance policies:
 - i. Workers' Compensation Coverage – Workers' Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).
 - ii. General Liability Coverage - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at

least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.

- iii. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned, hired and non-owned vehicles.
- b. **Policy Endorsements:** Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:
- i. The County and City, their elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds (“County and City additional insureds”).
 - ii. This policy shall be considered, and include a provision it is, primary as respects the County and City additional insureds, and shall not include any special limitations to coverage provided to the County and City additional insureds. Any insurance maintained by the County and City, including any self-insured retention the County and City may have, shall be considered excess insurance only and shall not contribute with it.
 - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. The insurer waives all rights of subrogation against the County and City additional insureds.
 - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County and City additional insureds.
- c. **Failure to Comply:** Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

8. HOLD HARMLESS/INDEMNIFICATION

TCVB shall indemnify, defend, save, protect and hold harmless County and City, their elected and appointed officials, officers, employees, agents and volunteers (collectively, “County and City”) from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, “Liability”) arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of TCVB, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County and

City for any expenditures, including reasonable attorney's fees, the County and/or City may make by reason of such matters and, if requested by County and/or City, shall defend any such suits at the sole cost and expense of TCVB. TCVB's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County and/or City or any other person; provided, however, that TCVB shall not be required to indemnify County and/or City for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County and/or City.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. Likewise, the City Attorney shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the City. Should the TCVB choose to hire a single attorney or firm to represent both the County and City, County Counsel and the City Attorney will consult and agree on the single legal representative. This indemnification clause shall survive the termination or expiration of this Agreement.

9. ASSIGNMENT

TCVB agrees that this Agreement is for the professional services of TCVB and it shall not assign, subcontract or sublet any part of this Agreement without the express prior written consent of County and City. Any assignment without the express prior written consent of the County and City is VOID.

10. COMPLIANCE

TCVB shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to TCVB's performance under this Agreement. Specifically, TCVB shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

11. PUBLIC RECORDS ACT

TCVB is aware that this Agreement and any documents provided to the County and/or City may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of TCVB to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County and/or City agree with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

12. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to

the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by all parties.

13. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

14. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

15. DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

16. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

17. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

18. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

15. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

16. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

17. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

18. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

19. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

20. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

21. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY

Chair
Tuolumne County Board of Supervisors

TCVB

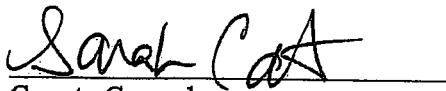


President
Tuolumne County Visitors Bureau

ATTEST:

Chief Deputy Clerk
Board of Supervisors

APPROVED AS TO LEGAL FORM:



County Counsel
County of Tuolumne

CITY

Mayor
City of Sonora

ATTEST:

City Clerk

Attachment B

**Letter of Understanding
TCVB
Matching Marketing Funds/Sponsorship Program**

LETTER OF UNDERSTANDING

to the

TOURISM PROMOTION AGREEMENT

TUOLUMNE COUNTY VISITORS BUREAU MATCHING MARKETING FUNDS/SPONSORSHIP PROGRAM

The Tuolumne County Visitors Bureau (TCVB) has a long history of supporting both non-profit and for-profit events within Tuolumne County either through matching marketing funds, sponsorships or in-kind contributions. The TCVB agrees to create a formal Trial Matching Marketing Funds/Sponsorship Program ("Trial Program") to benefit various events or other tourism marketing activity in Tuolumne County that meet criteria as set forth by the TCVB. The Trial Program is designed to support countywide promotional opportunities that bring new and returning visitors to Tuolumne County.

The TCVB is committed to this Trial Program for five years in the amount of up to \$75,000 annually commencing July 1, 2017. The Trial Program will be evaluated each year and after the fifth year continuation of, or any changes to, the Trial Program will be determined.

1. The Trial Program will be managed by the Tuolumne County Visitors Bureau staff and its Board of Directors.
2. The TCVB will include in the Annual Report to the Tuolumne County Board of Supervisors and the Sonora City Council an accounting of the funds and the organizations supported by the Trial Program.

Criteria Considered for Trial Program - Any approved events or campaigns shall comply with, and be evaluated with, the following requirements:

1. Support multi-day stays that encourage mid-week and off-peak visitations to Tuolumne County
2. Be conducted by a Tuolumne County based organization
3. Attract new and repeat visitors
4. Events shall take place in Tuolumne County
5. Campaigns shall promote Tuolumne County
6. Create awareness of, and/or have positive economic impact to, Tuolumne County
7. Strengthen the TCVB Brand
8. Strengthen the overall sustainability of tourism in Tuolumne County
9. Creates opportunities to alleviate traffic during peak tourism times for the benefit of both residents and visitors

Trial Matching Marketing Funds/Sponsorship Program Applicant Requirements - An applicant seeking Program funding shall include the following on their applications:

1. A complete marketing plan and budget showing how TCVB funds will be reinvested (include requested amount. Funds must be used for marketing, not facilities, infrastructure, overhead or salaries and the organizations financial and/or in-kind match to make it a "joint marketing" program).
2. A description of how the event or campaign complements the TCVB's mission and vision
3. A description of the demographics of event attendees or the targeted demographic of a campaign
4. Statement that demonstrates the estimated return on investment from the event or campaign
5. The applicant shall consider input from the TCVB making it a joint effort on content, format, style and strategy.

6. The application must be received a minimum of 120 days before event or campaign.
7. Upon receipt of the application by the TCVB, the TCVB shall forward the application to the TCVB Board of Directors for review.
8. The TCVB Board of Directors may or may not request an in-person presentation.
9. The applicant will be notified of the outcome via phone call and/or email and if the application is approved, funds will be distributed as appropriate.

Annual funding should not be assumed. If multiple events are requested by the same promoter, each will be submitted separately for evaluation and funding allocation.

Follow-Up Evaluation for Events and Campaigns - Applicant shall include a written report outlining:

For events:

1. Number of attendees at event broken down by in-county and out-of-county
2. Room nights generated
3. Money raised at the event (gross and net)
4. Estimated economic impact to Tuolumne County
5. How Tuolumne County was promoted through the event
6. Plans for the future of the event

For other tourism marketing activity (i.e. campaigns, promotions):

1. Visitor response to campaign
2. Estimated economic impact to Tuolumne County
3. Room nights generated
4. Phone calls or other inquiries generated
5. Ideas for event appeal, improvement, expansion and future promotion

Funding Examples

These are examples of recent matching funds or sponsorships that the TCVB has funded or is funding:

- All Hallows Fantasy Faire
- Chambers Tri-County Golf Tournament
- Father's Day Fly-In, Columbia Airport
- Groveland 49er Festival and Chili Cook-off
- Groveland Mini-Triathlon
- Groveland Trailheads Stewardship Summit
- Groveland Trailheads Trail Development Project
- ITSA Film Festival
- Railtown 1897 State Historic Park
- Rocca Park, Jamestown Blacksmith Shop
- Sierra Repertory Theatre
- Sonora Celtic Faire
- Strawberry Music Festival
- Tuolumne County Arts Alliance In-Focus Art Show
- Tuolumne County Historical Society Geo-Caching Event
- Tuolumne County Historical Society Chamber of Commerce
- Tuolumne County Search and Rescue Race to the Ribs Fundraiser
- Tuolumne County Sheriff's Possé, Mother Lode Round-Up and Parade

- Tuolumne County Shop Local Campaigns in conjunction with all local Chambers
- Tuolumne County Transportation Council and YARTS – The TCVB is currently working with the Tuolumne County Transportation Council on a summer program to offer free Trolley Rides on Saturdays for visitors and residents.
- Twain Harte Chamber of Commerce Summer Concert Series
- Unruly Country Brew 'n Que Festival
- Yosemite Gateway Partners

These are examples of possible additional sponsorship opportunities and is by no means a complete list nor should funding be assumed:

- Annual Me-Wuk Indian Acorn Festival
- Columbia College Opportunities (i.e. Columbia College Annual Wine Tasting)
- Columbia State Historic Park events
- Dodge Ridge Events/Campaigns
- Fairground Activities (in addition to Celtic Faire, All Hallows, Unruly)
- Jamestown 1st Fridays
- Jamestown Handmade Parade
- Jamestown Rods to Rails
- Magic of the Night
- Mother Lode Fair
- Railtown 1897 State Park events
- RV Rallies and other RV promotions
- Sonora 2nd Saturdays Art Night
- Sonora Christmas Parade
- Sonora Spring Festival
- Trails programming
- Twain Harte Christmas Parade
- Twain Harte's Royal Flush Crapper Derby
- Twain Harte's Who Let the Dogs Out
- Where the Hell is Groveland Car Show
- YARTS and Transportation programming

Examples of matching marketing funds programs may include:

- Online Marketing Campaigns
- Publication Campaigns, Examples:
 - California Visitors Guide
 - TCVB Vacation Planner
 - Yosemite Journal Magazine
 - Sunset Magazine, VIA Magazine
- Social Media Campaigns
- TCVB's Bay Area News Group Insert

The TCVB is anxious to get started on expanding this program now in cooperation with Tuolumne County agencies, the City of Sonora, service groups and other entities. We would like to further promote, and amplify the publicity of the annual calendar of events and other marketing activity for the economic benefit of Tuolumne County businesses.