



City of Sonora

94 N. Washington Street
Sonora, CA 95370
(209) 532-4541
sonoraca.com

Tourism Marketing Agreement

This Agreement is made and entered into as of the _____, day of _____, 2023 by and between the **CITY OF SONORA**, a municipal corporation ("City"), and Visit Tuolumne County (Consultant").

RECITALS:

- A. Consultant is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- C. City desires to retain Consultant to render professional services as set forth in this Agreement.

AGREEMENT

1. Term. The term of this Agreement shall commence on the 1st day of July 2023 and shall continue until June 30, 2028.
2. Scope of Services. The Consultant shall furnish the following services in a professional manner: ***"Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time." The referenced Scope of Services are considered to be annual professional services. The Scope of Services will be mutually evaluated and defined each year by June 1st through the term of the contract period.***
3. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City.
4. Compensation. Compensation to be paid to Consultant shall be the greater of 25% of the TOT, or **\$150,000**. In no event shall Consultant's compensation exceed \$150,000 without additional written authorization and amendments to the Scope of Services from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
5. Method of Payment. The Consultant shall provide quarterly progress reports by September 30, December 31, March 31, and June 30. City will provide the greater of 25% of the quarterly TOT payment or \$37,500 by October 31, January 31, April 30, and July 31

6. Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City.

7. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon ninety days written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

8. Consultant's Books and Records.

a. Consultant and, shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant and, shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Administrator, City Attorney, City Auditor, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession.

13. Indemnity, Consultant shall indemnify and hold harmless City, its elected and appointed officials, officers, employees, and volunteers (collectively, "City") from losses, costs, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided under this Agreement to the extent that such Liability is caused by the negligence or willful misconduct of Consultant, its officers, employees, agents, contractors, subcontractors, consultants, or any person under its direction or control and shall make good to and reimburse City for any expenditures, including reasonable attorneys' fees, the City may incur by reason of such matters. Consultant's obligations under this Section shall exist regardless of concurrent negligence or willful misconduct on the part of the City or any other person; provided, however, that Consultant shall not be required to indemnify City for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the City. The City acknowledges that this indemnity does not require the Consultant to provide an up-front legal defense to the City. This indemnification clause shall survive the termination or expiration of this Agreement.

Consultant further agrees to provide, at Consultant's expense, reasonable assistance to the City in responding to third party claims to the extent such claims implicate the quality of the Consultant's performance under this Agreement, which assistance shall include selection, management, and compensation of expert witnesses as necessary to substantiate or defend the quality of the Consultant's performance under this Agreement, as well as making Consultant's employees and project work product available as reasonably necessary to assist in the defense of such claims. This shall not preclude the City from recovering its reasonable attorneys' fees and defense costs in responding to third party claims to the extent such claims are found to have been caused by the Consultant's negligence or willful misconduct.

14. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall, procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees, and volunteers for losses arising from work performed by Consultant for City.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a 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.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage

for owned, hired, and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by the Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A: VII and shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance with respect to the City, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the City, including any self-insured retention the 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 City, its elected or appointed officers, officials, employees, or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

15. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first-class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Sonora
 94 N Washington Street
 Sonora CA 95370
 Attention: Melissa Eads, City Administrator

If to Consultant: Visit Tuolumne County
 193 S. Washington Street
 Sonora, CA 95370

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the Agency and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City special counsel.

18. Assignment and Subcontracting. This Agreement is for the professional services of VTC, and it shall not assign, subcontract, or sublet any part of this Agreement without the express prior written consent of City, except subcontracts for public relations, marketing, graphic design, research, financial reviews, social media, and agency of record shall not require prior written consent of the City. Any assignment without the express prior written consent of the City is VOID.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

21. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

22. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

23. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall

have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

24. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

25. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

26. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan, or other related programs or guidelines currently in effect or hereinafter enacted.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF SONORA:

Visit Tuolumne County

By: _____
Melissa Eads, City Administrator

By: _____
Lisa Mayo, President & CEO

ATTEST:

Tracy Skelly, City Clerk

APPROVED AS TO FORM:

Douglas White, City Attorney

EXHIBIT A

SCOPE OF SERVICES for Fiscal Year 23.24 - Limited to \$150,000

Proposed Campaigns:

Small Towns and Wellness- Market and industry research suggests that two of the top travel trends for 2023 and 2024 will be small towns and wellness. Travelers are looking for authentic Americana small towns and they are prioritizing wellness during their travels. These trends align with the City of Sonora's assets. Visit Tuolumne County will design marketing campaigns around these trends and will focus on the audiences of families, millennials, and boomers.

Special Projects:

Visit Sonora Logo- \$550

- Aligning with the Visit Tuolumne County Brand our graphics team will design and create a Visit Sonora specific logo that will be used to promote the City of Sonora on any advertising efforts.

Sonora Selfie Trail- \$5,000

- The VTC team will work with the Sonora Chamber of Commerce and the City of Sonora to identify "Social Media and Selfie" spots. VTC will then work with the technology platform, Bandwango, to create a mobile-friendly pass.

Photo Shoot- \$1,500-\$2,000

- VTC will work with a local photographer to capture content for marketing and promotional purposes. We will work to source talent that aligns with previously defined target audiences of families, millennials, and boomers. We will also focus the content on our proposed campaigns of Small Town Travel and Wellness.

Awards Submissions- \$450

- VTC will craft and submit for the annual Sunset Travel Awards. The City of Sonora will qualify for three categories: Where to Visit, Where to Eat, and Where to Stay.

Community Investment Project-\$2,500

- VTC will develop a marketing campaign to support the community. VTC will work on a project that will help to invest in the wellbeing of the community. This project would be something along the lines of a community awareness project, public art installation, or a clean-up day.

Newsletter Template and Social Media Optimization - \$2,500

- VTC will design a newsletter template for the City of Sonora. The City of Sonora will draft newsletters to send to the community. VTC will work with their social media agency to strategize on how to optimize the City of Sonora's social media outlets. VTC will also work to drive traffic to the City's social media platforms.

Advertising:

Print Ads- \$20,000

- VTC will secure print ads in key markets including the East Bay Area and Sacramento. Some outlets include Diablo Magazine, Sacramento Magazine, Sactown Magazine, and the Visit California Travel Guide Co-op.

Digital Ads- \$15,000

- VTC will work with Visit California and utilize their Leveraged Media Co-op Plan to secure pre-negotiated rates for digital ads placed in our key markets.

Social Ads- \$1,500

- VTC's social team will run dedicated Sonora social media ads that inspire extended visitation and overnight stays.

Familiarization Tours

Media Familiarization Tour- \$1,000

- VTC will dedicate one domestic media familiarization tour to the City of Sonora. The VTC staff will vet the journalist and create a Sonora specific itinerary. This cost includes travel, meals, lodging, and any activities for the journalist.

Meetings Familiarization Tour- \$1,000

- VTC will identify and vet a meeting planner that specializes in organizing small meetings. VTC will work with the City of Sonora and our partners in Sonora to tour meeting facilities, hotels, and restaurants. This cost includes travel, meals, lodging, and any activities for the meeting planner.

Influencer Partnership- \$3,500

- VTC will source and vet an influencer partnership for the City of Sonora. This cost includes a negotiated partnership rate and costs associated with travel.

Shared Marketing Costs – Costs Shared with Tuolumne County

International Markets-\$17,200

- VTC will continue our international marketing in Mexico, Canada, and the UK. This cost includes 10% of the international contracts.

Public Relations-\$2,900

- This cost includes the technology platform, Muck Rack, that VTC uses to send out media pitches and press releases. Also included in this cost is media conferences, VTC will attend key conferences to meet with media and pitch Tuolumne County and the City of Sonora to key media representatives.

Creative Design- \$2,700

- VTC works with a contracted graphic designer for all creative designs for advertising.

Travel Guide- \$7,000

- Every year VTC puts out a travel guide and distributes it across California. This cost includes a small portion of printing, distribution, and mailing costs.

Education Conferences- \$1,400

- To keep up with industry and marketing trends VTC attends industry conferences. These conferences introduce the team to new products, ways of doing business, and of course the latest in market research and tourism trends.

Trade and Meetings Conferences- \$6,400

- To continue growing our groups and meeting initiatives, VTC will attend travel trade and meeting conferences to meet with key tour operators and meeting planners to pitch Tuolumne County and the City of Sonora.

Dues and Subscriptions- \$1,500

- To leverage our partnerships and marketing reach, VTC belongs to several important industry associations. Each association is relevant to the success and growth of VTC.

Research-\$3,600

- VTC utilizes research technologies to identify key audiences and track return on investment (ROI) on marketing campaigns.

Office Expenses- \$11,500

- These costs include rent, utilities, office expenses, and other costs associated with operating the VTC Visitors Center and staff offices which are located in downtown Sonora.

Pay Roll- \$45,000

- This cost is associated with the staff time that will be dedicated to the City of Sonora. This includes salary, benefits, payroll services, and any tax associated costs.

It should be noted that promotion for the City of Sonora is woven throughout Visit Tuolumne County's marketing and promotions. Things like the Community Investment Funds that support Sonora based events like 2nd Saturday Art Nights and Concerts, Christmas Town, and the Mother Lode Round-Up will still be available in addition to the Scope of Work above.