

# Letter of Intent regarding a unified DMO for Jo Daviess County

February 2, 2016

Jo Daviess County & CVB  
City of Galena  
VisitGalena.org

To All Concerned:

Jo Daviess County and the City of Galena each have appointed a special committee to discuss and, if possible, reach agreement on a new Destination Marketing Organization ("DMO") that would replace the current destination marketing organization serving the County (Galena and Jo Daviess County Convention & Visitors Bureau or "CVB") and the current destination marketing organization serving the City (Greater Galena Marketing Inc. dba VisitGalena.org or "VG"). These two Special Committees on a unified DMO have held several joint meetings to (a) discuss and consider enhancements to the Singular Voice Plan that has been widely circulated and supported in the community, (b) obtain further input from the general public, and (c) obtain further input from representatives of the CVB and VG. As a result of those meetings, the Special Committees mutually agree that the attached Exhibit A represents a list of the main steps that the County, the City and VisitGalena need to take to transition to a single DMO in Jo Daviess County. Further, the Special Committees mutually agree to the key terms and conditions outlined in the attached Exhibit B.

The Special Committees respectfully submit this Letter of Intent ("LOI") with attachments to the County, the City, VisitGalena and the CVB (individually, a "Party", and collectively, the "Parties") for their consideration. The Special Committees welcome any suggested changes that may improve the proposed process, terms or conditions. If any such changes are proposed by the Parties, the Special Committees will again meet jointly in an effort to reach mutually agreeable language to address that point, and then resubmit the revised LOI to the Parties. If the Parties approve this LOI, then each Party will work in good faith to complete the necessary steps as outlined in this LOI and take any other reasonable actions that are necessary to complete the proposed transition to a unified DMO serving all of Jo Daviess County.

- 1. Future Role of Special Committees.** If the Parties approve and execute this LOI, it is proposed that the County and City Special Committees continue to meet on a monthly basis to monitor progress and seek solutions for any problems that may arise. Monthly meetings would continue until the new DMO has been operating as the State Certified DMO for Jo Daviess County for three months.
- 2. Continued Operations.** If the Parties approve and execute this LOI, VG and the CVB will continue operations independently while at the same time work and plan in good faith to implement a smooth transition to a unified DMO. Both VG and the CVB will prudently refrain from filling any non-critical employment positions that may be open or become open during the

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transition. In addition, both VG and the CVB will prudently refrain from spending resources on programs, materials or services that are likely to be of little value to the unified DMO.

3. **Closing Date.** The Parties acknowledge that time is of importance and that they will work towards closing the transaction as quickly as possible.
4. **Conditions to Closing.** Closing on the DMO Services Agreement and related documents will be subject to satisfaction of the conditions outlined in Exhibit B.
5. **NonBinding Agreement.** This letter is nonbinding and constitutes an indication of intent only and creates no liability or obligation of any nature whatsoever among the parties hereto with respect to any contemplated transaction or any other matter or action described or referred to herein. Legally binding obligations with respect to the contemplated transaction will only arise upon execution of a definitive DMO Services Agreement and related agreements with respect to the transaction.

If the foregoing is satisfactory, please indicate your agreement by signing a copy of this letter and returning it to our attention. The City and County Special Committees look forward to facilitating the transition to a unified DMO for Jo Daviess County.

Jo Daviess County

By: Ronald H. Smith

Its: County Board Chairman

City of Galena

By: Terry Renner

Its: Mayor

VisitGalena.org

By: [Signature]

Its: Board Chairman

CVB

By: [Signature]

Its: 2/23/16

## Exhibit A - Steps to Transition to a unified DMO

ver. 1/25/2016

Step	Parties Involved			Note	Timeline
	Co	City	VG DMO		
1) Execute Letter of Intent	X	X	X	summary of the process, terms & conditions	target Feb 2016
2) Assemble inaugural DMO Board			X	follow process outlined in LOI	start after LOI is signed; complete process ASAP
3) Create new DMO entity (articles, bylaws, EIN, etc.)			X	structure entity to be eligible for IRS 501(c)(6) designation	start after initial DMO Board assembled
4) Draft the DMO Services Agreement	X	X	X	formal agreement between City, County and new DMO	start after LOI is signed; execute at closing
5) Start CEO search			X	create job description; establish qualifications; advertise	start after initial DMO Board assembled
6) Create DMO budget and related financials			X	required by City, County and IRS	start after initial DMO Board assembled
7) Obtain IRS tax-exempt status			X	apply to IRS for 501(c)(6) "business league" designation	start after DMO entity & budget created; required before closing
8) Terminate/assign existing agreements - County	X			service providers (marketing, website, rent, utilities, etc.)	start planning after LOI is signed; execute at closing
9) Terminate/assign existing agreements - City		X	X	existing agreement between City & VG	start planning after LOI is signed; execute at closing
10) Terminate/assign existing agreements - VG			X	service providers (marketing, website, rent, utilities, etc.)	start planning after LOI is signed; execute at closing
11) Deal with employment agreements - County	X		X	formalize options for existing County employees; DMO offer employment to same employees, except CEO	start planning after LOI is signed; execute at closing
12) Deal with employment agreements - VG			X	formalize options for existing VG employees; DMO offer employment to same employees, except CEO	start planning after LOI is signed; execute at closing
13) Hire CEO			X	County relinquish certification; DMO obtain certification	on or about the closing date
14) Transfer State DMO Certification	X			transfer cash, AP, AR, other accounts, computers, furniture, etc. to DMO	start planning after LOI is signed; execute at closing
15) Transfer financial and capital assets from CVB & VG to DMO	X	X	X	execute appropriate agreements	start planning after LOI is signed; execute at closing
16) Closing	X	X	X	no change; continue to use for benefit of tourism and new DMO	target date TBD
17) County Tourism Capital Development Fund	X			not a closing requirement	no action required
18) Close CVB department of JD County	X			not a closing requirement	post-closing
19) Dissolve VG		X		not a closing requirement	post-closing

**Step 1 – Execute Letter of Intent**

Once the County, City and VG execute the Letter of Intent, the Parties will work in good faith on implementing the steps outlined in Exhibit A in accordance with the key terms and conditions outlined in this Exhibit B. On a 50-50 basis, the CVB and VG shall pay all reasonable expenses incurred by the newly formed DMO to perform the tasks assigned to it in transitioning to a unified DMO.

**Step 2 – Assemble inaugural DMO Board****A) Composition of inaugural DMO Board; Length of Initial Terms:**

The inaugural board shall be comprised of 11 individuals, 4 appointed by the entities listed below and 7 elected to represent the business categories listed below. Directors will serve for 3-year terms except that the inaugural board shall have initial terms as noted below.

Appointed Directors are appointed by the following entities...

- 1) Jo Daviess County (non-voting) – 3 years.
- 2) City of Galena (non-voting) – 3 years.
- 3) Eagle Ridge Resort & Spa (voting) – 3 years.
- 4) Chestnut Mountain Resort (voting) – 3 years.

Elected Directors are elected to represent the following business categories...

- 5) Large lodging (17 rooms & larger) – 2 years.
- 6) Small lodging (16 rooms and smaller) – 2 years.
- 7) Retail – 2 years.
- 8) Restaurant – 1 year.
- 9) At-large – 1 year.
- 10) At-large – 1 year.
- 11) At-large – 1 year.

Note: After the inaugural board has been seated, the DMO articles and bylaws will govern future board appointments. It is anticipated that board seats 1 – 4 will continue to be appointed by the entities identified above. It is anticipated that board seats 5 – 11 will be appointed by the DMO Board based upon nominations from businesses in the category being represented.

**B) Director Qualifications for inaugural DMO Board:**

All Directors on the inaugural DMO Board shall be residents of the County, owners of a business operating in the County, or an employee of a business operating in the County. In addition, Directors representing a business category must own or work for a business in that category.

**C) Appointing/Electing the inaugural DMO Board:**

- 1) Within 30 days after the LOI has been executed, each of the four entities having the right to appoint a director to the DMO Board shall take formal action to do so.

- 2) The four Appointed Directors shall manage the election process for the balance of the Elected Directors.
- 3) The lead contact for every tourism-related business and event coordinator in Jo Daviess County shall be eligible to vote. Each eligible voter may only vote one ballot.
- 4) The Appointed Directors, with support from the CVB and VG, shall prepare a comprehensive list of eligible voters.
- 5) The Appointed Directors shall prepare a ballot that includes a list of the seven Elected Director positions with a blank for one write-in candidate for each such position.
- 6) The Appointed Directors shall send a ballot to each eligible voter along with instructions for returning the ballots.
- 7) Each eligible voter may write-in a candidate for each of the seven Elected Director positions.
- 8) Ballots must be returned by a certain date established by the Appointed Directors. Ballots will be opened and tallied by, or under the direct oversight of, the Appointed Directors. Ballots will be saved and, in case of a challenge, the Appointed Directors shall refer to legal counsel for guidance.
- 9) Each Elected Director position shall be awarded to the individual receiving the largest number of votes among those who satisfy the Director Qualifications and are willing to serve.
- 10) If there is any dispute as to the eligibility of a voter or the validity of a ballot, the Appointed Directors shall consider the matter and make a final determination.
- 11) The Appointed Directors may establish other policies and procedures to achieve a fair and transparent election.

### **Step 3 – Create DMO Entity**

The DMO Board shall prepare articles, bylaws and other documents to formally create the DMO as a nonprofit business entity eligible for IRS 501(c)(6) designation or, after proper due diligence, utilize an existing 501(c)(6) entity.

### **Step 4 - DMO Services Agreement**

The DMO will engage legal counsel to draft a DMO Services Agreement incorporating the following key terms and conditions. As soon as possible, the draft will be circulated to the Parties for review and further input.

#### **A) Funding the DMO:**

- 1) The County will collect hotel/motel tax from lodging facilities in the County, except within the City of Galena, and
  - a) Retain funds to recover actual costs of collecting and disbursing hotel/motel taxes.

- b) Pay the balance collected the previous month to the DMO on or before the 3<sup>rd</sup> Friday of each month.
  - c) Provide monthly reports to the DMO on tax amounts collected and on lodging businesses delinquent in paying such tax to the County.
- 2) The City will collect hotel/motel tax from lodging facilities within the City of Galena, and
- a) Retain [none or same as County] to cover related expenses.
  - b) Pay the balance collected the previous month to the DMO on or before the 3<sup>rd</sup> Friday of each month.
  - c) Provide monthly reports to the DMO on tax amounts collected and on lodging businesses delinquent in paying such tax to the City.

**B) DMO Services to City & County:**

- 1) The DMO shall...
  - a) Develop policies, plans and programs for the promotion of tourism.
  - b) Engage in long-range planning to assure full utilization of the programs and finances available to the DMO.
  - c) Provide personnel necessary to implement a sound plan of operation.
  - d) Undertake regular surveys to understand visitor preferences and trends, and use such information in developing marketing activities.
  - e) Collaborate with other DMOs and business organizations to improve the visitor experience and to utilize resources as efficiently as possible.
  - f) Seek grant funding and other sources of revenue to supplement City and County funding.
  - g) Operate as if it were subject to Open Meetings Laws.
- 2) Any material contracts the DMO may enter with service providers shall be reviewed by the DMO's legal counsel and include a requirement for lien waivers whenever applicable.

**C) DMO Financial Reports:**

- 1) Annually. At least 60 days prior to each FY, the DMO shall provide to the County and the City...
  - a) A projected income statement (or budget) with comparison to the preceding two FYs.
  - b) A balance sheet and supporting schedules if needed for clarity.
  - c) A resolution of the DMO board approving the above financial statements.
- 2) Quarterly. Within 60 days after each of the DMO's fiscal quarters, the DMO shall provide to the County and the City an actual vs. projected income statement.
- 3) Monthly. The DMO shall provide to the County and the City a copy of the monthly financial reports provided to the DMO Board.

- 4) Acceptance of Financial Reports. Unless the City or the County provide written notice to the DMO formally objecting to a timely submitted financial report within 60 days after receiving such report, such report shall be deemed accepted by the City and the County.
- 5) Annual Audit. The DMO shall provide a copy of an independent audit within 30 days after the DMO has received such audit.
- 6) Inspection or Special Audit. Upon reasonable notice, the City and the County have the right to inspect the books and records of the DMO and obtain their own audit.
- 7) Working Capital and Reserves. The DMO shall attempt to maintain working capital equal to at least 25% of its budgeted operating expenses. The DMO may fund a capital reserve or other reserves if included in a budget accepted by both the County and the City.
- 8) GAAP. The DMO agrees to maintain records and create reports in accordance with Generally Accepted Accounting Principles.
- 9) FY. The DMO shall establish a July 1 – June 30 FY to coincide with the State of Illinois FY.

**D) DMO Business Reports:**

- 1) The DMO shall submit monthly reports to the County and the City including the DMO Board meeting minutes, occupancy rates, visitor center activity and website traffic.
- 2) The DMO shall report verbally to the City Council and the County Board in April, August and December regarding its year-to-date and planned activities, including performance measures.

**E) Term & Termination:**

- 1) The initial term of the Agreement shall be for 3 years.
- 2) On, or about, each anniversary of the DMO Services Agreement, representatives of the Parties shall meet to discuss any concerns regarding the DMO Services Agreement and consider amendments thereto if necessary. Unless a Party wishes to terminate the Agreement, the Agreement shall automatically be extended for an additional year such that the current term shall always remain 2 – 3 years in length.
- 3) Termination without cause. The Agreement shall not automatically renew and shall terminate at the end of the term if a Party provides to the other Parties written notice of intent to terminate the Agreement.
- 4) Termination for Cause.
  - a) The Agreement may be immediately terminated by any Party to this Agreement if another Party files for bankruptcy, becomes insolvent, or violates any of the following critical terms of the Agreement... [Once the LOI is approved and work begins on drafting this Agreement, legal counsel will need to help with this language.]

- b) The Agreement may be terminated by any Party if another Party violates any other term or condition of the Agreement and such term or condition is not cured within 30 days. [same here; legal counsel will need to help with this language]

**F) Amendments:**

- 1) The DMO Services Agreement may be amended only upon mutual written agreement of the Parties.

**G) Other standard contract language recommended by legal counsel:**

- 1) Indemnification
- 2) Insurance requirements
- 3) Non-discrimination
- 4) Independent contractor
- 5) Reps & Warranties
- 6) Etc.

**Step 5 – Start CEO Search**

As soon as possible after the inaugural DMO Board has been appointed/elected, the DMO Board shall create a CEO job description, establish CEO qualifications, and begin advertising for a CEO. To minimize any disruption in service, this position must be filled at or before closing.

**Step 6 – Create DMO Budget and related financials**

To be prepared by the DMO Board with cooperation from CVB and VG management. IRS will require financial statements as part of the application for tax-exempt status. Such financials shall be submitted to the City and the County according to the process outlined for DMO Financial Reports in the DMO Services Agreement.

**Step 7 – Obtain Tax-exempt Status**

The DMO may need to engage an attorney or consultant to help prepare the IRS application. Closing cannot be scheduled until IRS has approved the 501(c)(6) application.

**Step 8, 9, 10 – Terminate/Assign Existing Agreements**

The County, City and VG shall take the necessary steps to assign or terminate all existing service provider contracts effective on, or about, the closing date. Other than rental agreements and utility agreements that may need to be assigned, the DMO board and management shall determine (a) if it wishes to accept assignment of any existing County or VG service provider contracts and (b) it wishes to enter any new service provider contracts.

**Step 11 & 12 – Deal with Employment Agreements**

The County and VG shall take the necessary steps to (a) terminate existing positions in the CVB and VG effective on or about the closing date and (b) inform existing employees of employment alternatives they may have. The DMO shall offer comparable positions to each existing CVB and VG employee, except the CEO of each organization, with employment starting on or about the closing date.

**Step 13 – Hire CEO**

To minimize any disruption in service, this position must be filled at or before closing.

**Step 14 – Transfer State DMO Certification**

The County shall take the necessary steps to relinquish State DMO Certification at closing. The DMO shall take necessary steps to be awarded the State DMO Certification at closing.

**Step 15 – Transfer Financial and Capital Assets**

The County and VG shall take the necessary steps to transfer to the DMO relevant financial and capital assets (and liabilities if acceptable to the DMO) at closing. This may include cash, bank accounts, AR, AP, loans, computers, office furniture and equipment, etc.

**Step 16 – Closing**

The Parties agree to work diligently to accomplish the above steps in a timely manner and will mutually agree on a closing date as soon as practicable. The closing will be subject to the negotiation and execution of definitive transaction documents that will include mutually agreeable language recommended by legal counsel representing the Parties.

**Step 17 – County Tourism Capital Development Fund**

No action required. The County retains control of this fund. Disbursements from this fund include capital improvements to buildings used for tourism promotion and administration, and must be used for the benefit of the new DMO or its mission.

**Step 18 – Close CVB**

After the closing, the County may take action to close the Galena and Jo Daviess County Convention & Visitors Bureau.

**Step 19 – Dissolve VG**

After the closing, the VG Board may take action to dissolve Greater Galena Marketing Inc. dba VisitGalena.org.

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