

VISIT MESA AGREEMENT

This Agreement (the “Agreement”) is made and entered into as of the 1st day of July, 2017 by and between the City of Mesa, an Arizona municipal corporation (“City”) and Visit Mesa, an Arizona nonprofit corporation (“Visit Mesa”).

RECITALS

- A. The City currently imposes a 5% transient lodging tax (“TLT”), in accordance with Mesa City Code Section 5-10-447, which generally is a tax on hotels and lodging for the use of lodging space.
- B. In March 2004, City of Mesa voters approved an increase of .5% in the TLT, which at that time increased the percentage rate to 3% effective July 1, 2004. The collections from this 3% of the TLT are referred to herein as the “3% TLT Collection.”
- C. In November 2010, City of Mesa voters approved an increase of 2% in the TLT, which increased the TLT to its current rate of 5%. The collections from this 2% increase are referred to herein as the “2% TLT Collection.”
- D. Visit Mesa is a nonprofit corporation organized for the promotion of tourism in Mesa, Arizona, including the promotion of sporting and community events, visitor spending, economic tourism, and cultural exhibits.
- E. Arizona Revised Statute (“A.R.S.”) § 9-500.06 requires that a certain portion of the TLT be expended for the promotion of tourism either directly by the City or by a nonprofit organization that promotes tourism.
- F. In compliance with A.R.S. § 9-500.06, the City desires to transfer a portion of the TLT (the “TLT Transfer,” as defined below) to Visit Mesa for the promotion of tourism in Mesa, Arizona, and subject to the terms of this Agreement.
- G. Visit Mesa represents and warrants that it will expend the TLT Transfer for the promotion of tourism in Mesa, Arizona, in compliance with A.R.S. § 9-500.06.
- H. Visit Mesa will create and promote a “Convention & Visitors Bureau Program” as further set forth in this Agreement.

TERMS AND CONDITIONS

In consideration of the mutual promises and agreements contained in this Agreement, and the Recitals, which are incorporated herein, the parties agree as follows:

1. **TLT Transfer.** Subject to the other provisions of this Agreement, the City agrees to make

available to Visit Mesa such proceeds from the TLT as are approved by the Mesa City Council in the final City budget (the “TLT Transfer”). The TLT Transfer is also subject to the following conditions, limitations, and transfer cap provisions:

- 1.1 TLT Transfer will be reduced for the following: (i) for such TLT amounts that the City is obligated to pay, or set aside for possible future payment, pursuant to the terms of a development agreement or other agreement that has such obligations; (ii) for amounts that the Mesa City Council determines are appropriate, in its sole discretion, to retain; and (iii) for amounts that the Mesa City Manager determines are appropriate, in their sole discretion, to retain for the City of Mesa. The City will determine the manner in which the reduction from the TLT Transfer will take place.
- 1.2 Visit Mesa will annually spend \$89,000 of the TLT Transfer funds in the promotion of tourism related to those civic, community, or tourism projects or events that have been pre-determined between City and Visit Mesa and as described in **Attachment A**. Visit Mesa will also annually budget for the expenditure of an additional \$40,000 of TLT Transfer funds to be spent for the promotion of tourism and marketing in Mesa as directed by the Mesa City Manager (see Annual Event Contingency in **Attachment A**); however, if the Mesa City Manager does not require that the entire balance of the additional \$40,000 in TLT Transfer funds be spent in a given fiscal year, the remaining balance may be invested by Visit Mesa at its discretion. All other community relations activities planned by Visit Mesa are outlined in the Visit Mesa annual budget (**Attachment B**).
- 1.3 The TLT Transfer from the 3% TLT Collection shall also be reduced by the following annual amounts: (1) \$25,000, as an administrative charge reflecting the expenses incurred by the City in administering this Agreement and collecting the TLT; (ii) \$100,000, for Spring Training facility improvement costs; and (iii) \$200,000, for capital needs at the Mesa Convention Center. These deductions, which do not sunset, will be divided over the twelve monthly TLT Transfers each year.
- 1.4 The amount of the transfer from the City’s 2% TLT Collection is subject to a monthly cap (the “2% TLT Cap”). Specifically, from the City’s 2% TLT Collection, the City will only transfer up to \$500,000 annually during the term of this Agreement. The 2% TLT Cap will be applied on a monthly basis after all deductions to the TLT Transfer have been applied. The 2% TLT Cap will be \$41,666.67 on a monthly basis; if the cap is not reached in a particular month, the cap will NOT change in the following month (i.e. no increase in the cap due to decreased numbers in prior months).
- 1.5 The TLT Transfer will be distributed by the City to Visit Mesa in twelve monthly payments annually on or before the 30th day of each month. Beginning on July 1,

2017, the monthly TLT Transfer will equal the TLT collected by the City in the previous month subject to the 2% TLT Cap, and less all deductions and reductions to the TLT Transfer as provided herein.

- 1.6 Visit Mesa acknowledges and agrees that it is not guaranteed to a specific sum or any sum of Mesa's TLT, and the TLT Transfer is subject to deductions and reductions as described herein.

2. **Visit Mesa's Obligations.** Visit Mesa shall comply with all of the following terms and conditions:

- 2.1 Attached as ***Attachment B***, Visit Mesa hereby provides its proposed three-year budget and community relations budget for fiscal years 2017/2018 through 2019/2020. In September each year, Visit Mesa will also provide the City its proposed Destination Sales and Marketing Plan. Visit Mesa agrees to provide the services budgeted and programming described in Destination Sales and Marketing Plan. Any changes to the attached budget or Destination Sales and Marketing Plan must be approved by the City. Visit Mesa agrees that the Mesa City Council may make such changes in the proposed budget and Destination Sales and Marketing Plan at any time, as it deems appropriate.
- 2.2 Visit Mesa hereby submits its financial year end estimate summary statement for the currently ending fiscal year 2016/2017 in ***Attachment B*** attached hereto and will provide annual, fiscal year financial summaries by September 30th of each year during the term of this agreement.
- 2.3 Visit Mesa agrees to use sound and prudent financial business practices, follow generally accepted accounting principles, and keep complete and accurate records of all monies received and disbursed under this Agreement.
- 2.4 Visit Mesa shall submit reports to the Mesa City Council twice each year, or as requested by the City Manager, that detail the expenditure of funds conveyed under this Agreement and the results anticipated and achieved through the expenditures.
- 2.5 Visit Mesa will administer the day-to-day operation of the Convention & Visitors Bureau Destination Sales and Marketing Plan.
- 2.6 Visit Mesa agrees that decisions on funding priorities for civic, community or tourism activities will be made in consultation with and approved by the City.
- 2.7 From that portion of the TLT Transfer that comes from (or can reasonably be attributed to) the 3% TLT Collection, Visit Mesa shall utilize at least 15% of such funds for specific civic, community, or tourism projects or events such as the

Arizona Celebration of Freedom, Merry Main Street, spring training events, downtown parades, El Tour de Mesa, Mesa Arts and Culture events and marketing, downtown events and/or other similar activities for the promotion of tourism in Mesa and brand value-add as directed by the City Manager or his designee. The 15% minimum requirement shall include the pre-determined amounts required to be spent in accordance with Section 1.2 and ***Attachment A***.

- 2.8 Visit Mesa shall expend and use all TLT Transfer funds for the promotion of tourism in compliance with ARS § 9-500.06.
3. **Term and Effective Date.** The parties intend and agree, that the existing agreement between the City and Visit Mesa for fiscal year 2016/2017 will remain in effect until the end of its term on June 30, 2017, unless otherwise amended by the parties. The term of this Agreement shall become effective on the 1st day of July, 2017 and shall terminate on the 30th day of June, 2020.
4. **Assignment.** Visit Mesa may not assign or transfer its rights or obligations under this Agreement.
5. **Indemnity.** To the fullest extent permitted by law, Visit Mesa shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, costs, charges, and expenses (including, but not limited to, attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from: (1) any negligent acts, errors, mistakes or omissions in the work, services, or professional services of Visit Mesa, its agents, representatives, subcontractors, subconsultants, or employees in the performance of this Agreement or providing any service under or related to the Convention & Visitors Bureau Program; and (2) Visit Mesa's, its agents', representatives', subcontractors', sub-consultants', or employees' failure to comply with or fulfill the obligations established by this Agreement. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
6. **Audit & Record Review.** Visit Mesa shall be audited, including audited financial statements, on an annual basis by an independent certified public accounting firm; a copy of such audit, including all updates to the audit, shall be provided to the City within ten (10) business days of Visit Mesa receiving the audit or audit updates, as applicable. Visit Mesa shall, at the City's request, make available for inspection(s) and provide a copy of all of Visit Mesa's financial records, all records related to this Agreement, and all records of all monies received and disbursed under this Agreement.
7. **Conflict of Interest.** Visit Mesa shall adopt a conflict of interest policy that any director, officer, or employee of Visit Mesa, or any of their relatives having a substantial interest in

any Visit Mesa transaction may not be involved or participate in the discussion or decision of whether Visit Mesa should enter into this Agreement or related transactions.

8.1 "Substantial Interest" shall mean as defined in A.R.S. § 38-502(11).

8.2 "Relative" shall mean as defined in A.R.S. § 38-502(9).

8. **Insurance.**

8.1 Without limiting any liabilities or any other obligations of this Agreement, Visit Mesa shall obtain and maintain the minimum insurance coverages and terms set forth in Section 8 throughout the term of the Agreement.

8.2 Visit Mesa must maintain all the following types and amounts of insurance:

- a. Commercial general liability in amounts not less than \$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury, personal injury, advertising injury, and products and completed operations with broad form contractual and property damage coverage;
- b. Automobile liability with a combined single limit of not less than \$1,000,000;
- c. Umbrella liability in amounts not less than \$2,000,000 per occurrence/\$2,000,000 aggregate; and
- d. Worker's compensation insurance in accordance with the provisions of Arizona law.

8.3 Visit Mesa's insurance or self-insurance shall be primary insurance and any insurance or self-insurance maintained by the City shall be in addition to Visit Mesa's insurance and shall not contribute to it.

8.4 Visit Mesa's insurance carrier will add the City of Mesa, its employees, officers, officials and agents, as additional insureds under Visit Mesa's insurance policy, and Visit Mesa shall provide the City with an Insurance Certificate with the additional insured endorsement.

9. **Non-Performance, Cure, and Termination.** "Non-Performance" by Visit Mesa shall mean one or more of the following: (i) Visit Mesa fails to comply with the approved budget or Destination Sales and Marketing Plan; (ii) Visit Mesa fails to use any TLT Transfer funds in accordance with this Agreement and A.R.S. § 9-500.06; or (iii) Visit Mesa fails to observe or perform any other material obligation of Visit Mesa required

under this Agreement. Visit Mesa shall, upon written notice from the City, proceed to immediately cure or remedy such Non-Performance and, in any event, such Non-Performance shall be cured within thirty (30) calendar days after receipt of such notice. If Visit Mesa fails to cure the Non-Performance within thirty (30) days, the City may terminate this Agreement by written notice to Visit Mesa, and such termination will be effective immediately and shall not constitute a waiver of any rights or remedies.

10. **Termination Upon Notice.** The City may terminate this Agreement for any or no reason upon ninety (90) calendar days' written notice. Such termination shall be effective ninety (90) calendar days after the date of such notice or at such later date specified in such notice of termination. Termination Upon Notice shall not constitute a waiver of any rights or remedies of the parties under this Agreement.
11. **Payment on Termination.** Upon termination of this Agreement, for any reason, Visit Mesa will be entitled to payment of TLT Transfer funds through the date of termination as set forth in this Agreement.
12. **A.R.S. § 38-511 Notice.** This Agreement is subject to the provisions of A.R.S. § 38-511. The City may terminate this Agreement if any person significantly involved in negotiating, drafting, securing, or obtaining this Agreement for or on behalf of the City becomes an employee in any capacity of Visit Mesa.
13. **A.R.S. § 9-500.14.** All TLT funds provided to Visit Mesa must be used by Visit Mesa in compliance with A.R.S. § 9-500.14 to the same extent to which the City must comply with the statutory requirements.
14. **Applicable Law and E-Verify Compliance.** Visit Mesa must conduct its business in compliance with applicable law, including the procurement of all necessary permits and licenses. To the extent required by A.R.S. §§ 41-4401 and 23-214, Visit Mesa represents and warrants compliance with all federal immigration laws and regulations that relate to its employees and its compliance with the E-Verify requirements of A.R.S. § 23-214(A). Breach of the aforementioned warranty shall be deemed a breach of the Agreement and may result in the termination of the Agreement by the City. The City retains the legal right to randomly inspect the papers and records of Visit Mesa and any of its contractors and subcontractors who work under this Agreement to ensure compliance with the aforementioned laws. Further, Visit Mesa shall include a provision in its contracts with contractors and subcontractors: (i) requiring compliance with, and a warranty under, A.R.S. §§ 41-4401 and 23-214; (ii) allowing Visit Mesa to terminate any such contract for a breach of such warranty; and (iii) allowing Visit Mesa and the City to inspect the papers and records of the contractor's and subcontractor's employees to ensure compliance with the above-mentioned laws.

15. **Surviving Provisions.** All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement; additionally, all obligations, which reasonably should survive, shall survive.
16. **Entire Agreement and Amendments.** This Agreement, along with its Attachments, represents all the terms and conditions agreed on by the parties with respect to its subject matter. The Agreement replaces and supersedes any previous agreements, representations, understandings, and negotiations of the parties, oral or written, with respect to the subject matter of this Agreement. Amendments to the Agreement will only be done by a written instrument signed by both parties.

[Signatures on the following pages.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

CITY OF MESA,
an Arizona municipal corporation

By: _____
Christopher J. Brady
City Manager

Approved as to form:

City Attorney

Attested by:

City Clerk

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the _____ of the City of Mesa, and he/she in such capacity being authorized so to do, executed the foregoing instrument for the purposes contained therein, on behalf of said Arizona municipal corporation.

Notary Public

My Commission Expires:

VISIT MESA,
an Arizona nonprofit corporation

By:_____

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ the _____ of Visit
Mesa, and he/she in such capacity being authorized so to do, executed the foregoing
instrument for the purposes contained therein, on behalf of said Arizona nonprofit corporation.

Notary Public

My Commission Expires:

ATTACHMENT A**Pre-determined and Budgeted Visit Mesa Sponsorships**

Annual events	Committed Amounts (Per Year)
El Tour de Mesa	\$1,500
AZ Celebration of Freedom	\$20,000
Merry Main Street	\$10,000
Phx-Mesa Marathon	\$20,000
Mexican Baseball Fiesta	\$5,000
USA Swimming (Sol Mates)	\$10,000
Mesa Arts Center- Spark After Dark, and Museum Marketing	\$10,000
Spring Training Festivities	\$7,500
Downtown Parades (MLK, Veterans Day)	\$5,000
TOTAL ANNUAL PLANNED CONTRIBUTIONS	\$89,000
ADDITIONAL ANNUAL MARKETING SUPPORT	\$40,000*
* This amount to be budgeted and available in full annually by Visit Mesa solely to the City or partner agencies of the City for unanticipated, tourism/event-related requests during the three-year term, and ONLY as confirmed requested by Mesa City Manager.	

ATTACHMENT B:
FY 16/17 Year End and 2017/18- 2019/20 Proposed Budgets

	Anticipated YE 2016-17	Projected 2017-18	Projected 2018-19	Projected 2019-20
INCOME				
Bed Tax - Room Surcharge (3% growth)	2,485,000	2,560,000	2,640,000	2,720,000
Visitors Guide & Map ads	72,000	103,000	105,000	110,000
VisitMesa.com	15,300	15,500	15,500	15,500
Partnership Income	120,000	125,000	130,000	130,000
Interest	3,300	3,400	3,500	3,600
Communications Income	12,400	2,000	3,000	13,000
National Sales Income	7,300	9,500	7,500	9,500
Sports Sales Income	45,000	46,000	47,000	48,000
Travel Industry Sales Income	5,500	3,000	6,000	6,500
Community Relations Income	25,000	20,000	20,000	20,000
Town of Queen Creek	48,000	48,000	48,000	48,000
Prop 302 Program	315,000	322,000	330,000	337,000
Prop 202 Program (contingent on receiving grant)	25,000	25,000	25,000	25,000
TOTAL INCOME	3,178,800	3,282,400	3,380,500	3,486,100
EXPENSES				
MARKETING EXPENSES				
Community Relations	367,500	384,000	396,000	408,000
Communications	65,000	68,500	59,100	64,000
Cooperative Marketing Support (CVB consortium effort to lure int'l air service to Sky Harbor)	-	15,000	15,000	15,000
Creative Agency	57,000	62,000	65,000	70,000
Destination App	16,700	17,000	17,000	17,000
Hennen Commissions	16,000	26,000	30,000	32,000
Partnership	15,000	21,600	21,600	21,600
Postage	5,300	5,500	6,000	6,500
Printing	29,000	30,000	32,000	33,000
Promotional Items	5,000	5,000	5,000	5,000
Prop 302	315,000	322,000	330,000	337,000
Sports Sales	40,000	46,800	55,500	54,500
Travel Industry Sales	48,000	53,800	98,700	98,700
National Sales	80,000	93,400	110,225	112,000
Senior VP Sales & Marketing	30,000	32,500	31,800	31,800
Town of Queen Creek	8,000	10,000	10,000	12,000
Videos/Imagery	15,000	25,000	25,000	25,000

Website Marketing & Maintenance	15,000	16,000	17,000	18,000
TOTAL MARKETING EXPENSES	1,127,500	1,234,100	1,324,925	1,361,100
ADMIN EXPENSES				
Accounting	12,000	13,000	13,500	14,000
Advocacy Meetings	500	3,500	3,500	3,500
Audit	13,000	13,000	13,000	14,000
Bank Charges	5,500	5,000	5,000	5,000
Board of Directors	4,500	4,500	4,500	4,500
Building Rent	58,000	58,000	58,000	58,000
Building Insurance	3,700	3,800	3,900	4,000
Building Maintenance	19,000	20,000	22,000	24,000
Building Utilities	12,000	13,000	14,000	15,000
Capital Expense	5,000	10,000	6,000	7,000
CEO In Town T&E	5,000	5,000	5,000	5,000
CEO Out of Town T&E	12,000	14,000	14,000	14,000
CEO Contingency	80,000	28,000	28,000	28,000
DMAI	12,800	13,000	13,500	14,000
Dues, Memberships, Subscriptions	14,000	14,500	15,000	15,500
Employee Benefits - Insurance	130,000	145,000	160,000	170,000
Employee Benefits - 401(k)	32,000	37,000	43,000	45,000
Grassroots Advocacy	24,000	100,000	100,000	25,000
Industry Sponsorships	16,500	18,000	20,000	22,000
Legal Fees	8,500	8,500	8,500	8,500
Legislative Affairs	30,000	30,000	30,000	30,000
Lobby Kiosks	5,400	5,400	5,700	5,700
Miscellaneous	9,000	9,000	9,500	10,000
Office Equipment Lease	4,600	4,700	4,700	4,700
Office Equipment Maintenance	12,000	12,500	13,000	13,500
Office Supplies	5,000	5,000	5,000	6,000
Parking	3,000	3,000	3,000	3,000
Payroll Taxes	74,500	75,000	76,000	77,000
Professional Development	5,000	10,000	12,000	15,000
Recruitment/Personnel	2,000	2,500	3,000	3,500
Research	11,500	12,000	12,500	13,000
Salaries	1,095,000	1,201,000	1,250,000	1,265,000
Team Building/Employee Recognition	500	2,000	2,500	3,000
Telephone	14,300	13,500	13,750	14,000
TOTAL ADMIN EXPENSES	1,739,800	1,912,400	1,991,050	1,959,400
TOTAL EXPENSES	2,867,300	3,146,500	3,315,975	3,320,500
Income minus expenses	311,500	135,900	64,525	165,600

Attachment B

Visit Mesa – Proposed Community Relations Budget

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	COMMUNITY RELATIONS Bed tax: 2,560,000 15% =	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
2	Arizona Celebration of Freedom										20,000			20,000
3	Benedictine Golf Tournament									1,500				1,500
4	Citrus Classic					4,500								4,500
5	Clover Cup									5,000				5,000
6	Cubs/A's Spring Training tickets						5,000							5,000
7	Downtown parades (MLK, Veteran's Day)					2,500		2,500						5,000
8	El Tour de Mesa							1,500						1,500
9	Fiesta Bowl Shootout & VM Lady Thunderbird Tourney		10,000											10,000
10	Heather Farr Classic									1,200				1,200
11	Int'l Gay & Lesbian Tourism Assn Dues									2,500				2,500
12	IPC Grand Prix Desert Challenge Games											1,000		1,000
13	Merry Main Street				10,000									10,000
14	Mesa Arts Center - Spark After Dark, and Museum Marketing				10,000									10,000
15	Mesa Citizen of the Year Assn								800					800
16	Mesa Foundation for Educ Excellence (1/3 share)								500					500
17	Mesa MLK Celebration							450						450
18	Mesa Music Fest (Motor Media)			12,500										12,500
19	Mesa Sprint Triathlon (Foundation for Mesa)		750											750
20	Mexican Baseball Fiesta			5,000										5,000
21	NJCAA Golf Nationals											2,000		2,000
22	Phx-Mesa Marathon			20,000										20,000
23	ProspectWire		10,000											10,000
24	Sports360AZ	15,000												15,000
25	Spring Training Festivities								7,500					7,500
26	USA Swimming Arena Pro Series (Sol Mates)									10,000				10,000
27	USA Water Polo 12U Nat'l's (Rocktober)					6,200								6,200
28	Under Armour Baseball All American Games						3,000							3,000
29	VisitMesa.com Basketball Challenge					3,000								3,000
30	WAC Baseball											3,000		3,000
31	City of Mesa requests as directed by Mesa City Manager				5,000	10,000	10,000	10,000		5,000				40,000
32	Contingency	5,000	15,000	7,500	5,000	20,000	20,000	19,600	15,000	15,000	15,000	15,000	15,000	167,100
33	TOTALS	20,000	35,750	45,000	30,000	46,200	38,000	34,050	23,800	40,200	35,000	21,000	15,000	384,000