

**AGREEMENT WITH VISIT MESA FOR THE PROMOTION OF TOURISM AND
DESTINATION MARKETING IN THE CITY OF MESA**

This Promotion of Tourism and Destination Marketing Agreement (the “Agreement”) is entered into this 13th day of May 2024 by and between the City of Mesa, an Arizona municipal corporation (“City”) and Visit Mesa, an Arizona nonprofit corporation (“Visit Mesa”).

RECITALS

- A. Arizona Revised Statute (“A.R.S.”) § 9-500.06 requires that a certain portion of the transient lodging tax (“TLT”) be expended for the promotion of tourism either directly by the City or by a nonprofit organization that promotes tourism.
- B. Visit Mesa is a nonprofit corporation organized for the promotion of tourism and destination marketing in Mesa, Arizona, including the promotion of sporting and community events, visitor spending, economic tourism, and cultural exhibits.
- C. In compliance with A.R.S. § 9-500.06, the City desires to transfer a portion of the actual TLT received (the “TLT Transfer” as defined below) to Visit Mesa for the promotion of tourism and destination marketing in Mesa, Arizona, subject to the terms of this Agreement.
- D. Visit Mesa desires to expend the TLT Transfer for the promotion of tourism and destination marketing in Mesa, Arizona, in compliance with A.R.S. § 9-500.06 and the terms and conditions of this Agreement.
- E. Visit Mesa desires to create and promote an annual “Convention and 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. **Term.** This Agreement is made effective on July 1, 2024 (the “Effective Date”), and will terminate on June 30, 2025.
- 2. **TLT Transfer.** Subject to the other provisions of this Agreement, the City agrees to make available to Visit Mesa a portion of the actual TLT funding received by the City from the Arizona State Department of Revenue, (the “TLT Transfer”). For the term of this Agreement, the TLT allocation to Visit Mesa will be fifty percent (50%) of the TLT received by the City during the fiscal year.

3. **Visit Mesa's Obligations.** Visit Mesa shall comply with all the following terms and conditions:
- 3.1 Within fifteen (15) calendar days from July 1, 2024, Visit Mesa will provide a draft Visit Mesa plan for promoting tourism and destination marketing services (the "Services") titled "Convention and Visitor Bureau Program" (the "Visit Mesa Program") for the review and approval of the City Manager, or his designee. The City Manager, or designee will, within thirty (30) calendar days of receipt of the draft Visit Mesa Program, review the Visit Mesa Program and the underlying Services and promptly notify Visit Mesa of any changes. After the City Manager, or designee, notifies Visit Mesa of any changes to the Visit Mesa Program or the Services, if Visit Mesa contests, questions, or seeks clarification for any changes, Visit Mesa shall request a meeting with the City Manager, or designee, to discuss the contested changes (the "Clarification Meeting"). The City Manager, or designee, will, within fifteen (15) calendar days of Visit Mesa's request for the Clarification Meeting, schedule a meeting with Visit Mesa. The City shall retain the final decision-making authority over the changes Visit Mesa must implement and Visit Mesa, upon the latter of fifteen (15) calendar days of being notified of the changes or fifteen (15) calendar days following the Clarification Meeting, provide a final copy of the Visit Mesa Program to the City's Destination Team (the "City Team") as defined below. Any subsequent changes to the Services must be reviewed and discussed with the City Team or, when requested by the City Team, be presented to, and discussed with the City Manager or the Mesa City Council. Visit Mesa agrees that the Mesa City Council or its City Manager, or designee, may, from time to time, ask for required changes in the Services subject to adequate notice of the changes to and response to the changes by Visit Mesa in the pattern set forth above.
- 3.2 On or before the Effective Date, Visit Mesa's Chief Executive Officer, or designee and Visit Mesa staff will meet with the City Team to present Visit Mesa's full program financial summary, an overview and discussion on key performance measures, and to discuss Visit Mesa goals for programs and initiatives in the 2024-2025 City fiscal year.
- 3.3 At the request of the City Team, the City Manager or the Mesa City Council, Visit Mesa will provide an update on progress under the Visit Mesa Program to the City Council as may be reasonably required during the term of this Agreement.
- 3.4 At the request of the City Manager, or designee, Visit Mesa will meet with the City Team, or members of the City Team, to facilitate and ensure clear communication and collaboration between the two entities. Visit Mesa shall meet with the City

Team before proposing a program, service or initiative requiring use of TLT, other City funds, or any City in-kind participation. (a "City Commitment"). Visit Mesa acknowledges and agrees that any City Commitment program, service, or initiative is subject to written approval by the City Manager, or designee. Visit Mesa is also the recipient of federal, state and county funds and the parties agree to maintain clear communication and collaboration with respect to Visit Mesa's use of these additional funds.

- 3.5 While this Agreement is in effect, Visit Mesa shall always have the City Parks, Recreation & Community Facilities Director, the Economic Development Director, and the Downtown Mesa Association ("DMA") Executive Director, or their respective designees, serving as permanent, full voting members of the Visit Mesa Board of Directors. The City Manager shall provide to Visit Mesa names of those individuals to be appointed within thirty (30) calendar days of the Effective Date to allow Visit Mesa to acknowledge these individuals. Visit Mesa shall not have the power to veto or deny the appointment of these individuals to the Board of Directors, or the power thereafter to vote to remove these individuals from the Board of Directors.
- 3.6 While this Agreement is in effect, the City Manager, shall have the sole right and discretion to designate and select an individual to serve on the Visit Mesa Executive Committee as a permanent, full voting member. The City Manager shall provide Visit Mesa with the name of the individual to be appointed within thirty (30) calendar days of the Effective Date to allow Visit Mesa to acknowledge these individuals. Visit Mesa shall not have the power to veto or disapprove of the appointment of these individuals to the Board of Directors, or the power thereafter to vote to remove these individuals from the Board of Directors.
- 3.7 Visit Mesa shall prohibit any person employed by Visit Mesa, whether as a regular employee or independent contractor, from having any voting rights as a member of the Visit Mesa Board of Directors or its Executive Committee. Visit Mesa shall adopt bylaws and policies consistent with this requirement.
- 3.8 Visit Mesa agrees to continue its financial, in-kind, and other support and services for DMA special events, in an amount to be determined in consultation with the City Team or City Manager. Within thirty (30) calendar days after the effective date of this Agreement, Visit Mesa shall meet with the DMA Executive Director, or designee, to determine opportunities for financial, in-kind, and other support and services that Visit Mesa will provide to DMA special events. Within forty-five (45) calendar days after the effective date of this Agreement, Visit Mesa and the DMA Executive Director will provide the City Team with a written proposal reflecting the scope and amount of financial, in-kind, and other support and services Visit Mesa will provide for DMA special events during the term of this Agreement. Visit

Mesa acknowledges and agrees that the scope and amount of financial, in-kind, and other support and services for DMA special events is subject to written approval by the City Manager, or designee.

- 3.9 Visit Mesa's Chief Executive Officer, or designee, shall meet monthly with the DMA Executive Director, or designee, and the City's Downtown Transformation Manager to discuss, coordinate, and collaborate on DMA or City special events.
- 3.10 Visit Mesa will limit its Services and financial, in-kind, and other support commitments solely to activities, programs, events, and properties within City limits, except for state-wide and regional events, or locations and program partners who are outside of the City that also promote or are connected with the City. Before initiating any leads or entering into any contracts for state-wide or regional events, Visit Mesa will consult with and obtain written approval from the City Team.
- 3.11 Prior to entering into this Agreement, Visit Mesa will provide the City Manager, or designee, with a written list of all activities, programs, events, and projects Visit Mesa has committed to or entered into a contract for any state-wide or regional events prior to the Effective Date. Visit Mesa acknowledges and agrees that the City Manager, or designee, may, after giving Visit Mesa notice, require Visit Mesa to terminate or otherwise end a relationship or contract, if legally able to do so, for any activity, program, event, or project committed to or contracted for, prior to the Effective Date.
- 3.12 For any meeting of the Visit Mesa Executive Committee, the Board of Directors, or Visit Mesa committee, Visit Mesa shall provide no less than forty-eight (48) hours written notice to all members of the Board of Directors, Executive Committee, and any committee before a meeting may be held. By way of example, if an Executive Committee meeting is going to be held, forty-eight (48) hours written notice must be provided to all Executive Committee Members, and to all members of the Board of Directors before a meeting can occur. Visit Mesa shall adopt policies and procedures consistent with this requirement.
- 3.13 A detailed written agenda, specifying what is to be discussed at a Board of Directors or Executive Committee meeting, and the time and place of such meeting, must be posted on the Visit Mesa website, available for the public to view, no less than twenty-four (24) hours prior to the meeting time. Only items specifically set forth in the agenda may be discussed or considered at any Board of Directors or Executive Committee meeting.
- 3.14 Visit Mesa shall allow for the public to attend and be present at any Board of Directors or Executive Committee meeting but may exclude the public from that portion of a meeting in which the matters being discussed include personnel matters

such as hiring or termination of an employee, legal advice provided by Visit Mesa's retained legal counsel on a contract matter, or legal advice on pending or anticipated litigation.

- 3.15 Visit Mesa shall review and adopt all recommended changes proposed by the Coraggio Group, that Visit Mesa does not contest, within thirty (30) days of receipt of the recommended changes including, but not limited to, changes to governance documents, bylaws, policies, and procedures. For the Coraggio Group recommended changes that Visit Mesa contests, Visit Mesa shall request a meeting with the City Manager, or designee, to discuss the contested changes. The City shall retain the final decision-making authority over the Coraggio Group changes Visit Mesa must implement.
- 3.16 Visit Mesa shall institute and 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.

4. **City of Mesa Obligations.** The City will comply with the following terms and conditions:

- 4.1 The City will convene a "Destination Mesa Team," and provide an overview of roles and responsibilities to Visit Mesa. If updates are required for team roles and responsibilities, the City will provide those updates to Visit Mesa staff in a timely manner and to ensure clear communications. As of the date of this Agreement, the City Team shall consist of the following members: City Manager, City Manager designee as Contract Manager, City's Chief Financial Officer, Parks, Recreation and Community Facilities Director, or designee, Economic Development Director, or designee, and the City's Diversity Manager. The City has the full authority to change the members of the City Team or to disband the City Team at its sole discretion.
- 4.2 The City Team will be available to meet with Visit Mesa staff to review budgets, performance metrics and/or program initiatives and to ensure clear communications and collaboration between the City and Visit Mesa.
- 4.3 The City shall invest TLT actual funding on City priorities for tourism, including spring training, convention center/amphitheater, arts and culture, and local programs that bring visitors to Mesa, such as Arizona Celebration of Freedom, Merry Main Street and other programs deemed priorities by the City Manager, the Destination Team, or the Mesa City Council.

5. **Assignment.** Visit Mesa may not assign or transfer its rights or obligations under this Agreement.

6. **Indemnity.** To the fullest extent permitted by law, Visit Mesa shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers, 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 intentional misconduct, 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 Visit Mesa 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.

To the fullest extent permitted by law, the City shall defend, indemnify, and hold harmless, Visit Mesa its elected and appointed officials, agents, officers, 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 intentional misconduct, 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; and (2) failure to comply with or fulfill the obligations established by this Agreement by the City, or its agents, representatives, subcontractors, subconsultants or employees. 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.

7. **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.
8. **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).

9. **Insurance.**

9.1 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 this Section throughout the term of the Agreement.

9.2 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.

9.3 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.

9.4 Visit Mesa's insurance carrier will add the City of Mesa, its elected and appointed officials, employees, officers, 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.

10. **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; (ii) Visit Mesa fails to provide the Services; (iii) Visit Mesa fails to use any TLT Transfer funds in accordance with this Agreement and A.R.S. § 9-500.06; or (iv) 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 ("Notice of Non-Performance"), 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 or, if the cure or remedy is not possible to cure within thirty (30) calendar days, such Non-Performance will be cured within a reasonable time after the Notice of Non-Performance, not to exceed sixty (60) calendar days. If Visit Mesa fails to cure the Non-Performance within the time frames set forth herein, the City may terminate this Agreement by written notice to Visit Mesa (the "Termination Notice"), and such termination will be effective immediately and shall not constitute a waiver of any rights or remedies.

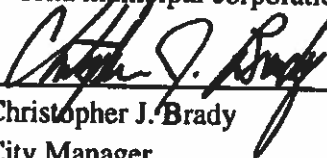
11. **Termination Upon Notice.** The City may terminate this Agreement for any or no reason upon sixty (60) calendar days' written notice ("Termination Notice"). Such termination shall be effective sixty (60) calendar days after the date of the Termination Notice or at such later date specified in the Termination Notice. Termination upon notice shall not constitute a waiver of any rights or remedies of the parties under this Agreement.
12. **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.
13. **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.
14. **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.
15. **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.

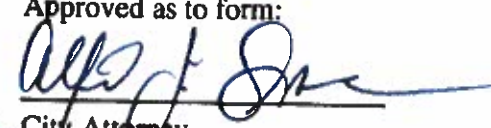
16. **Surviving Provisions.** All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement; additionally, all obligations, which reasonably should survive, shall survive.
17. **Entire Agreement and Amendments.** This Agreement, along with its Exhibits, 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:

for City Attorney

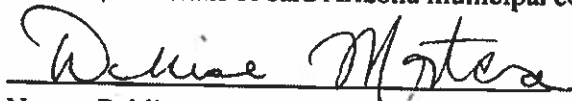
Attested by:


City Clerk

State of Arizona)
) ss.
County of Maricopa)



The foregoing instrument was acknowledged before me this 13th day of May, 2024 by Christopher Brady the City Manager of the City of Mesa, and he/she in such capacity being authorized to do so, executed the foregoing instrument for the purposes contained therein, on behalf of said Arizona municipal corporation.


Notary Public

My Commission Expires:

8/31/2026



VISIT MESA,
an Arizona nonprofit corporation

By: *Dennis Kavanaugh*

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 13th day of May,
2024 by Dennis Kavanaugh the Vice Chair of Visit
Mesa, and he/she in such capacity being authorized to do so, executed the foregoing instrument
for the purposes contained therein, on behalf of said Arizona nonprofit corporation.

Denise Montana
Notary Public

My Commission Expires:

8/31/2024



EXHIBIT A

Visit Mesa Direct-Service Performance Metrics

On or before July 1st, Visit Mesa will meet with the City Team to review its program, budget, and actual expenditures, as well as performance metrics that include goals for the current year.

1. Total actual number of rooms booked in Mesa that are specifically booked, and generated by Visit Mesa. Of these actuals, how many actual room nights were from Visit Mesa generated national or international marketing efforts.
2. Total number of actual visitors. This number will include an aggregated total of booked hotel room nights during the fiscal year across all markets including national sales, sports sales, and travel industry sales.
3. Total number of leads generated, specifically by Visit Mesa. This number will include an aggregated total of booked hotel room nights during the fiscal year across all markets including national sales, sports sales, and travel industry sales.
4. Projected direct spend by actual visitors. Direct spend will be from the Destination International Event Impact Calculator.
5. Projected annual TLT revenues to the City of Mesa for the previous fiscal year and current fiscal year. Compare to actual total TLT's collected for the previous fiscal year by the City of Mesa.