

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

This Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_\_, 2020 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 Statutes (“A.R.S.”) § 9-500.06 requires that transaction privilege taxes imposed by a city or town on the hospitality industry at a rate which exceeds the transaction privilege tax imposed by the city or town equally on all businesses subject to a transaction privilege tax (the “TLT”) be expended for the promotion of tourism.
- B. A.R.S. § 9-500.06(D)(2) permits the City to use the TLT to promote tourism itself and/or by entering into a contract with a non-profit organization or association for the promotion of tourism by the non-profit organization or association.
- C. Visit Mesa is a nonprofit corporation organized for the promotion of tourism and destination marketing in Mesa, Arizona.
- D. Subject to the terms and conditions of this Agreement, the City desires to transfer a portion of the TLT it receives to Visit Mesa for use in 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.
- E. Subject to the terms and conditions of this Agreement, Visit Mesa desires to use the TLT received from the City for the promotion of tourism as described in Recital D above.

**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 a portion of the actual TLT funding the City receives from the Arizona State Department of Revenue in the percentages set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “TLT Transfer”). The new schedule (Exhibit A) percentages will officially begin with the September 1, 2020 TLT collections and then continue thereafter per the Agreement.

2. **Visit Mesa's Obligations.** Visit Mesa shall comply with all of the following terms and conditions:
- 2.1 Within 60 days of each fiscal year end during the term of this Agreement, Visit Mesa shall prepare and deliver to the City an annual tourism and destination marketing plan substantially in the form attached hereto as **Exhibit B** (the "Program"). Any changes to the services to be provided under the Program must be reviewed by and discussed annually with the City's Destination Mesa Team (defined in Section 3.1 below) and/or, when requested, reviewed by and discussed with the City's manager (the "City Manager") or the City's council (the "City Council"), which review and discussion will take place within 30 days after Visit Mesa delivers the Program to the City. Visit Mesa agrees to make such changes to the services to be provided under the Program as the City Manager or a majority of the City Council may reasonably request following the review and discussion described above.
  - 2.2 Visit Mesa will assign members of its staff to work with the Destination Mesa Team in furtherance of this Agreement (the "Visit Mesa Team"). At the time it delivers the Program to the City each year, Visit Mesa will provide a summary memorandum to the Destination Mesa Team identifying the members of the Visit Mesa Team and their roles, responsibilities and other information pertinent to participation by the Visit Mesa Team in ongoing staff-to-staff meetings with the Destination Mesa Team. Visit Mesa, in its sole discretion, may make such changes to the Visit Mesa Team members or their roles and responsibilities as Visit Mesa may from time to time determine and will provide the Destination Mesa Team with an update of the above-referenced memorandum in a timely manner to communicate such changes.
  - 2.3 Visit Mesa will provide the City with certain data relative to Visit Mesa's work under the Program, including updates thereto, as set forth on Exhibit C attached hereto and incorporated herein by this reference (the "Service Performance Metrics") . Additionally, as set forth in Exhibit C, Visit Mesa will provide the annual memorandum describing its internal data quality assurance procedures to ensure information provided to the City is accurate and timely.
  - 2.4 In addition to the requirements of **Exhibit C**, the Visit Mesa Team will meet with the City's Destination Mesa Team a minimum of once per year, or as needed to ensure good staff-to-staff communications, to discuss the upcoming fiscal year budget, to review Visit Mesa's plans for its upcoming Program and to review the Service Performance Metrics or survey work underway or completed. Visit Mesa will give serious consideration to the feedback received from this annual meeting in the development of its final work products.

2.4.1 While timing for these meetings is expected to be spring (April/May) for budget-related discussions and summer (July/August) for staff-to-staff meetings focused on Service Performance Metrics, the precise time of year for meetings will be determined by the Visit Mesa Team in direct consultation with the Destination Mesa Team to ensure meetings are timely, provide complete and thorough information, and enable Visit Mesa to receive feedback and/or direction from the City.

- 2.5 From time to time during the term of this Agreement, at the request of and upon reasonable notice from the Destination Mesa Team member(s), the City Manager or the City Council, Visit Mesa will provide an update to the City Council of the progress being made under the Program.
- 2.6 Upon reasonable notice and request from the Destination Mesa Team, the Visit Mesa Team will meet with the Destination Mesa Team or individuals from the Destination Mesa Team to ensure clear communication and collaboration between the two entities. Additionally, the Visit Mesa Team will set a meeting with the Destination Mesa Team if Visit Mesa is proposing a service or initiative that may require the City's financial, in-kind, or policy-related participation.
- 2.7 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.
- 2.8 Prior to the start of each fiscal year, Visit Mesa will provide a letter to the City of Mesa to document and confirm that its approved Program complies with ARS § 9-500.06.

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

- 3.1 Promptly following the execution of this Agreement, the City will convene a "Destination Mesa Team" and provide an overview of its roles and responsibilities to Visit Mesa. If updates are required for team roles and responsibilities, to ensure clear communication, the City will provide those updates to Visit Mesa staff in a timely manner. The City has full authority to change the Destination Mesa Team and/or discontinue it at its sole discretion and will provide Visit Mesa with timely notice of any such changes or intentions to make such changes together with a proposal for amending the terms and conditions of this Agreement to accommodate such changes.
- 3.2 To ensure clear communications and collaboration between the City and Visit Mesa and to ensure that TLT funds are being used to promote local tourism as required under ARS § 9-500.06, the Destination Mesa Team will be available to meet with

the Visit Mesa Team to review budgets, Service Performance Metrics, Program initiatives and methods used to ensure data accuracy.

- 3.3. The City shall invest its share of TLT 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, the Mesa Marathon, parades and other programs deemed priorities by the City Manager, the Destination Mesa Team, or the City Council.
4. **Term and Effective Date** The parties intend and agree that the term of this Agreement (“Term”) shall be five (5) years beginning \_\_\_\_\_, 2020 and concluding June 30, 2025.
5. **Assignment.** Neither party may assign or transfer its rights or obligations under this Agreement.
6. **Indemnity.**
  - 6.1 **From Visit Mesa.** 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 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 Program; and (2) failure to comply with or fulfill the obligations established by this Agreement by Visit Mesa or its agents, representatives, subcontractors, sub-consultants 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.
  - 6.2 **From the City.** To the fullest extent permitted by law, the City shall defend, indemnify and hold harmless Visit Mesa, 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 intentional misconduct, negligent acts, errors, mistakes or omissions of the City, 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, sub-consultants or employees.
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 has adopted a conflict of interest policy in a form previously disclosed to the City (the "Conflict of Interest Policy"). Visit Mesa affirms that no director, officer, or employee of Visit Mesa with a Financial Interest (other than Financial Interests arising from agreements of employment between Visit Mesa and its employees and legal counsel) has been involved in or has participated in the discussion or decision of whether Visit Mesa should enter into this Agreement. The term "Financial Interest" has the same meaning as set forth in the Conflict of Interest Policy and the terms "director, officer or employee" include any Family Relationships of such individuals, as the term Family Relationships is defined in the Conflict of Interest Policy.

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 Section 9 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 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.

10. **Non-Performance, Cure, and Termination.**

10.1 By Visit Mesa. "Non-Performance" by Visit Mesa shall mean one or more of the following: (i) Visit Mesa fails in a materially way to comply with the approved budget; (ii) Visit Mesa fails to provide the services as stated in Exhibit B; (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 ("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. If Visit Mesa fails to cure the Non-Performance within thirty (30) days of receipt of the Notice of Non-Performance, 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.

10.2 By the City. "Non-Performance" by the City shall mean the City fails to observe or perform any material obligation of the City required under this Agreement. The City shall, upon written notice from Visit Mesa ("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. If the City fails to cure the Non-Performance within thirty (30) days of receipt of the Notice of Non-Performance, Visit Mesa may either require the City to enter into such dispute resolution procedures as Visit Mesa may reasonably request or terminate this Agreement by written notice to the City (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 ninety (90) calendar days' written notice ("Termination Notice"). Such termination shall be effective ninety (90) 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:

\_\_\_\_\_  
City Attorney

Attested by:

\_\_\_\_\_  
City Clerk

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 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 \_\_\_\_\_,  
2020 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:

\_\_\_\_\_

List of Exhibits (Attached to staff report and to be attached to final, signed copy)

**EXHIBIT A**

Percentage Allocation TLT2020-2025

**EXHIBIT B**

Annual Business Development Plan, “Program”  
(Sections for Priorities/Outcomes for FY 20/21 Attached)

**EXHIBIT C**

Visit Mesa Direct-Service Performance Metrics

**EXHIBIT D**

Visit Mesa – City Resolution