

**CITY OF MESA
OPERATION OFF THE STREETS AGREEMENT**

THIS OPERATION OFF THE STREETS AGREEMENT (“Agreement”) is executed to be effective the 1st day of January, 2021 (“Effective Date”) by and between THE CITY OF MESA, a municipal corporation, (“City”) and _____ (“Hotel”). City and Hotel may be referred to jointly as “Parties”, and each separately may be referred to as a “Party”.

RECITALS

A. On January 30, 2020, the World Health Organization declared the 2019 novel coronavirus (“COVID-19”) a public health emergency of worldwide concern.

B. On March 11, 2020, the Governor of the State of Arizona, Douglas A. Ducey, declared a State of Emergency in Arizona due to the COVID-19 outbreak.

C. On March 17, 2020, the Mayor of the City of Mesa, John C. Giles, by proclamation declared a State of Emergency for the City of Mesa to protect the health, safety, and welfare of City and its residents and further declared that the COVID-19 outbreak constitutes an immediate threat to life, public health, safety, welfare and economic viability to City and authorized City to take measures to protect the health and safety of its residents, businesses, community and employees.

D. City created Operation Off The Streets in response to the COVID-19 outbreak to provide emergency, temporary and safe shelter for individuals and families of City’s at-risk homeless population and to help slow the spread and mitigate the effects of COVID-19 and to enable compliance with COVID-19 public health precautions.

E. City and Hotel desire to enter into this Agreement as part of Operation Off The Streets and Hotel agrees to lease to City guest rooms at Hotel for the purpose of providing temporary shelter to City’s homeless population during the COVID-19 emergency, subject to all terms and conditions of this Agreement.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein, and the terms and conditions of this Agreement, the Parties agree as follows:

**SECTION 1
LEASE OF GUEST ROOMS**

1.01 Lease of Guest Rooms. Hotel agrees to lease to City a block of hotel rooms consisting of fifty (50) hotel rooms at Hotel’s property located at _____ (“Property”). Each individual hotel room leased to City pursuant to this Agreement shall hereinafter be referred to as a “Guest Room” and the entire block of Guest Rooms shall hereinafter be referred to as the “Block.” Each Guest Room in the Block will be a room with either a minimum of one king-sized bed or two

double/queen-sized beds. The number of Guest Rooms required to meet City's needs may change throughout the Term (as that term is defined in Subsection 2.01) of this Agreement. As such, the number of Guest Rooms in the Block may be modified by the Parties via an Amendment (Subsection 9.05).

1.02 Occupancy of Guest Rooms. The Parties agree that no more than four (4) people ("Guests") will reside in a single Guest Room. The Parties agree that no pets or other animals are permitted in a Guest Room, other than service animals.

SECTION 2

TERM

2.01 Term. The term of this Agreement shall be for a period commencing on the Effective Date and ending at midnight on January 1, 2022 unless otherwise canceled or terminated as provided herein ("Term").

2.02 Renewal. At the expiration of the Agreement, the Term of this Agreement may be renewed for additional one-year periods upon written Agreement of the Parties and such renewals will become part of the "Term" of this Agreement.

SECTION 3

CONSIDERATION

3.01 Block Fee. City shall pay Hotel \$1,200.00 plus applicable taxes and fees per month per Guest Room for each Guest Room in the Block ("Fee"). The Fee shall be paid by City to Hotel in two-month increments for the Term of this Agreement.

3.02 Payment Procedures. City shall pay the Fee to Hotel at the beginning of every other month, beginning on the Effective Date and continuing for the Term of this Agreement, said payment covering the Fee for the Block for the following two months. The Fee shall be remitted to Hotel at the address provided in Subsection 9.01 of this Agreement.

SECTION 4

RESPONSIBILITIES OF PARTIES

4.01 Housekeeping. Hotel agrees to provide the following housekeeping and cleaning services to each Guest Room occupied by a Guest a minimum of two (2) times per week: making the beds; washing and replenishing towels; cleaning and sanitizing all hard surfaces; cleaning and sanitizing bathroom; replenishing a reasonable amount of toiletries; vacuuming the carpets and cleaning the hard floors; removing trash. Hotel agrees to provide the following housekeeping and cleaning services to each Guest Room occupied by a Guest a minimum of one (1) time per week: stripping the beds and washing bedding. For the safety of Hotel staff and Guests, Guests will vacate the Guest Rooms while housekeeping takes place.

4.02 Mesa Police Department Presence. City agrees that officer(s) of the Mesa Police Department will be present at the Property during the Term of this Agreement, in numbers and at dates and times as determined by City in its sole discretion. By agreeing to the

police presence of this Subsection 4.02, City is not assuming any liability arising out of or related to the security of the Property or the safety of persons at the Property. City is not waiving and explicitly reserves its defenses under Arizona Revised Statutes (“A.R.S.”) § 12-821 and § 12-821.01. In addition to and without limiting any other indemnity in this Agreement, Hotel shall indemnify, defend, and hold City harmless from any claim relating to or arising out of security (including, but not limited to, adequacy of security, lack of security, and types of security) for the Property or for any Hotel employee, invitee, guest, or other person at the Property.

4.03 Coordination with Non-Profit Organization to Assist Guests. City shall coordinate with a non-profit organization that has experience in assisting homeless individuals and families and connecting them to community services to provide on-site services for the Guests at the Property, which may include: COVID-19 assessments or referrals to testing; regular check-ins on the Guest Rooms; connections and references to medical care; connections and references to mental and behavioral health services including for addiction and substance abuse; facilitating access to obtaining a driver’s license, birth certificate, or other identifying documentation; assisting with job preparedness; and assisting Guests with transferring to other housing options, based on their needs and level of readiness for a more permanent housing solution.

4.04 Damage to Hotel Property. City shall pay or reimburse Hotel for documented damage to the Property or to improvements or furniture, fixtures, or equipment caused by a Guest, with the following limitations:

A. City shall only pay or reimburse Hotel for damage to a Guest Room up to five-hundred dollars (\$500.00) per Guest Room, and for damage to any other area at the Property outside of a Guest Room up to five-hundred (\$500.00) per occurrence of damage, unless the improvement or furniture, fixture, or equipment is destroyed beyond repair, in which case City shall pay or reimburse Hotel the fair market value of the item immediately prior to its destruction.

B. City shall only be responsible for paying or reimbursing Hotel for reasonable costs and shall not be responsible for any costs above and beyond a reasonable, standard, fair market value repair or replacement cost, even if Hotel incurs expenses related to the repair or replacement above that amount.

C. City shall not be responsible for any expenses related to normal wear and tear of the Property.

D. Hotel shall provide City with documentation of the alleged damage or destruction caused by the Guest, including a description, photographs, videos, and a reasonable and reliable estimate of the cost of repair or, if destroyed, the fair market value. If Hotel cannot meet its obligations under this Subsection (D), City shall not be responsible for the claimed damage or destruction.

E. City shall not be responsible for any other repair or maintenance expenses of Hotel other than as stated in this Subsection 4.04.

4.05 Guests. The Guests are the guests of Hotel and shall comply with Hotel's rules and guidelines applicable to all other guests at the Property. To that end, Hotel may evict Guests under the same policies and procedures applicable to any other guest at the Property. City shall have no obligation or responsibility to ensure that Guests comply with Hotel's rules, guidelines, policies, or procedures. City is not responsible for and does not assume any liability for the actions of Guests and shall not be liable for any damage caused by Guests other than as set forth in Subsection 4.04.

SECTION 5 **INSURANCE**

5.01 Coverage Required. From and after the Effective Date, Hotel shall carry, at Hotel's sole cost and expense: General liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Five Million and No/100 Dollars (\$5,000,000.00), annual aggregate, insuring against any and all liability of the insured with respect to the Property and the Guests. City, its agents, officials, volunteers, officers, elected officials and employees shall be named as additional insureds on all policies obtained by Hotel. All policies shall be from a company or companies rated A- or better, authorized to do business in the State of Arizona.

5.02 Evidence and Requirements of Coverage. Upon the Effective Date, Hotel shall disclose to City a Certificate of Insurance indicating the required coverage and naming City, its agents, officials, volunteers, officers, elected and appointed officials and employees as additional insureds. All insurance certificates and applicable endorsements are subject to review and approval by City, such approval not to be unreasonably withheld or delayed. All commercial general liability, property damage and other casualty policies of Hotel shall be written as primary policies in relation to any insurance carried by City and shall provide that any insurance or self-insured retention which City may carry or has is strictly excess, secondary and non-contributing with any insurance carried by Hotel. No policy shall expire, be cancelled or materially changed to affect the coverage available without advance written notice to City.

SECTION 6 **INDEMNIFICATION**

6.01 Indemnification by City. To the fullest extent permitted by law, from and after the Effective Date, City will indemnify, defend, pay, and hold free and harmless Hotel and Hotel's officers, officials, agents, employees and volunteers for, from and against any and all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) of Hotel and Hotel's officers, officials, agents, employees and volunteers for property damage, personal injury and bodily injury occurring on or at the Property or arising from this Agreement that are the result of the negligent or intentional acts or omissions of City and City's officers, officials, agents, employees and volunteers.

6.02 Indemnification by Hotel. To the fullest extent permitted by law, from and after the Effective Date, Hotel will indemnify, defend, pay, and hold free and harmless City and City's officers, elected and appointed officials, agents, employees and volunteers for, from and against any and all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) of City and City's officers, officials, agents, employees and volunteers for property damage, personal injury and bodily injury occurring on or at the Property or arising from this Agreement that are the result of the negligent or intentional acts or omissions of Hotel and Hotel's officers, officials, agents, employees and volunteers.

SECTION 7

DEFAULT AND REMEDIES

7.01 Event of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default"):

A. The failure of City to pay any installment of the Fee or failure of City to pay a sum owed pursuant to Subsection 4.04, provided that City does not cure such failure within thirty (30) calendar days after delivery by Hotel of a written notice of such failure.

B. The failure of Hotel to perform any of its material obligations or responsibilities under this Agreement, whether or not that failure is specifically identified as creating default in the language of this Agreement, provided that Hotel does not cure such failure within thirty (30) calendar days after delivery by City of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and City agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

7.02 Content of Default Notice. Any default notice tendered to a Party hereunder shall be deemed to be sufficient if it is reasonably calculated to put that Party on inquiry as to the nature and extent of such default.

7.03 Remedies. The sole remedies for either Party for an uncured Event of Default shall be:

A. To seek specific performance of this Agreement, which means the enforcement of all of the Parties' obligations under this Agreement. The Parties stipulate that a Maricopa County Superior Court, or Federal Court, may impose specific performance requirements on either of the Parties for an uncured default of this Agreement.

B. To terminate this Agreement provided, however, that before a Party may pursue termination of this Agreement as a remedy, the Party must first provide a notice to the other Party indicating that the terminating Party has elected to pursue termination of this Agreement as a remedy for an uncured breach or Event of Default in existence at the time the notice is sent, and stating that if the specific breach or default is not cured within

thirty (30) days following the delivery to the Party of the notice, then the terminating Party may proceed to terminate this Agreement.

C. To seek any remedies available at law or in equity, provided, however, Hotel shall not seek, and hereby waives any right to, damages from City for loss of profits, loss of any other revenue, loss of business opportunity, loss of good will, or loss due to business interference.

7.04 No Waiver. There shall be no implied waivers. No express waiver by either Party of any breach or default by the other Party in the performance of its obligations under this Agreement shall be deemed to be a waiver any subsequent Event of Default in the performance of any such obligations, and no express waiver shall affect an Event of Default in a manner other than as specified in the waiver.

7.05 Remedies Not Exclusive. The specific remedies set forth in this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which a Party may be entitled to resort, either in law or in equity, in case of any breach or threatened breach of any provisions of this Agreement.

SECTION 8

SALE OF PROPERTY

8.01 Sale of Property. If there is a sale or other conveyance by Hotel of its interest in the Property, Hotel will provide City with at least ninety (90) days prior notice of the effective date of the sale/conveyance and this Agreement will automatically terminate upon such effective date, with City no longer having any right to use the Property following the termination date.

SECTION 9

GENERAL PROVISIONS

9.01 Notices. All notices given, or to be given, by either Party to the other, shall be given in writing and shall be addressed to the Parties at the addresses or e-mail addresses hereinafter set forth or at such other address as the Parties may hereafter designate. Notices and payments to Hotel, and notices to City shall be deemed properly served when sent by mail, hand delivered, or e-mailed to the addresses stated below. Any notice shall be deemed to have been received four (4) calendar days after the date of mailing/e-mailing or upon actual receipt if personally delivered.

To Hotel:

To City:

City of Mesa
Attn: City Manager
20 East Main Street
P.O. Box 1466 (USPS mail only)
Mesa, Arizona 85211

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street
P.O. Box 1466 (USPS mail only)
Mesa, Arizona 85211

9.02 Termination for Convenience. The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.

9.03 Termination under A.R.S. § 38-511. This Agreement is subject to termination under A.R.S. § 38-511.

9.04 Non-Discrimination. Hotel, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or familial status shall be excluded from participation, denied the benefits of, or be otherwise subject to unlawful discrimination in the use of the Property and Guest Rooms.

9.05 Amendments. This Agreement sets forth all of the agreements and understandings of the Parties and is not subject to modification except in writing, signed by the Parties.

9.06 Successors; Joint Liability. The covenants herein contained will, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto; and all of the Parties hereto will be jointly and severally liable hereunder.

9.07 Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Agreement.

9.08 Independent Legal Relationship. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Hotel. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

9.09 Governing Law. Any dispute with respect to this Agreement and the rights and duties created by this Agreement will be governed by the laws of the State of Arizona and litigated in a court of competent jurisdiction in Maricopa County, Arizona. The Parties will not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Agreement. The Parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.

9.10 Binding Agreement. This Agreement shall be considered the only agreement between the Parties hereto pertaining to the Property. It is understood that there are no oral agreements between the Parties affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and

understandings, if any, between the Parties with respect to the subject matter hereof, and none shall be used to interpret or construe this Agreement.

9.11 Survivability. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement.

9.12 Headings. All headings used in this Agreement are only for reference purposes and do not affect the interpretation of the Agreement.

9.13 E-Verify Requirement. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 23-214 are applicable, Hotel represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-Verify requirements of A.R.S. § 23-214(A). A breach of Hotel's warranty under this Subsection will be deemed a breach of this Agreement and may result in the termination of this Agreement by City; however, Hotel will not be deemed to have materially breached this warranty if it establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A. Pursuant to A.R.S. §§ 41-4401 and 23-214, City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement or on the Property to ensure compliance with the above-mentioned laws.

9.14 Litigation. Hotel must notify City within ten (10) calendar days after the commencement of any action, suit, proceeding or arbitration against Hotel, or any material development in any action, suit, proceeding or arbitration pending against Hotel if such action, suit, proceeding or arbitration would materially and adversely affect the Property, the validity of this Agreement, or the performance of Hotel's obligations under this Agreement.

9.15 Severability. If any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits to the Parties as if such severance and reformation were not required. Unless prohibited by any applicable law, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

9.16 Non-Waiver of Rights. No waiver or default by City of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Hotel shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Hotel, and City shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

9.17 Drug Free Work Place. Hotel shall require a drug free workplace for all employees working at the Property. Specifically, all Hotel employees who are working at the Property or under this Agreement shall be notified in writing by the Hotel that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Hotel agrees to prohibit the use of intoxicating substances by all employees and shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties on the Property.

9.18 Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

9.19 Construction. The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

9.20 Counterparts. This Agreement and any addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The Parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Agreement, by transmitting a signed copy of the signature page hereof, by facsimile or email, to the other Party hereto.

9.21 Authority. The person executing this Agreement on behalf of, or as a representative for the Hotel warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Hotel and that this Agreement is binding upon the Hotel in accordance with the terms and conditions herein.

9.22 Enforcement of Agreement. The terms and conditions of this Agreement are enforceable only by the Parties, and neither the public nor Guests shall have any right to enforce the terms and conditions herein.

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EXECUTED to be effective as of the Effective Date.

CITY:

The City of Mesa, Arizona, an Arizona
municipal corporation

By: _____
Natalie N. Lewis
Deputy City Manager

Approved as to form

By: _____
City Attorney's Office

HOTEL:

By: _____
Its: _____