

**AGREEMENT between  
THE TOWN OF PARADISE VALLEY and  
EXPERIENCE SCOTTSDALE.**

THIS AGREEMENT, hereinafter referred to as the “Agreement”, is made and entered into this \_\_\_\_ day of June, 2020, by and between the **TOWN OF PARADISE VALLEY**, a municipal corporation of the State of Arizona, hereinafter referred to as “Town”, and Scottsdale Convention and Visitors Bureau, Inc., an Arizona non-profit corporation, doing business as **EXPERIENCE SCOTTSDALE**, hereinafter referred to as “ES”.

**RECITALS**

WHEREAS, the parties desire to enter into this Agreement to, among other things, pursue the following shared objectives:

- A. ES will work to support the Town’s vision to enhance the Town’s unique character for its residents and to support the success of the Town’s resorts.
- B. ES and the Town support common values of professionalism, high quality customer service, teamwork, respect, accountability, and transparency.
- C. Through the tourism industry, ES can help to elevate the unique lifestyle and character of the Town while ensuring a strong return on the Town’s investment.
- D. ES’s efforts to elevate the tourism industry support the Town and its desire to preserve the Town’s special character, provide high quality service, invest in infrastructure projects, manage the Town’s financial resources, and identify opportunities to create and promote a more sustainable community.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**AGREEMENTS**

**1. Scope of Services.**

- (a) ES agrees to promote the Town’s hospitality industry for the purpose of bringing additional business to the Town’s hospitality industry. As used herein, the terms “promote” and “promotion” shall mean that ES shall perform its duties described in this Agreement.
- (b) ES will assist the Town and its resorts by aiding in the generation of non-resident taxes by annually developing and implementing a comprehensive destination program of work, which is published as the “Strategic Business Plan.” The Strategic Business Plan for 2020-2021 is attached hereto as Exhibit A and incorporated by this reference. The performance of ES’s duties pursuant to this Agreement will be guided by the Strategic Business Plan, which will be updated annually and provided, along with a budget, to the Town no later than June 1 for each coming year.
- (c) Annually, ES shall convene a meeting with Town representatives and Town resort general managers to allow the group to share input on priorities, trends and insights related to the coming year’s Strategic Business Plan. The meeting will be scheduled at an appropriate

time to allow input to be considered for the coming year's program of work. The Town will moderate the conversation and ES will gather said input.

## **2. Compensation.**

- (a) Town shall pay ES for services rendered herein based on a percentage of the Town's tax collections upon any business activity of any hotel or resort charging a tax on transient lodging pursuant to 4A-447 of the Paradise Valley Town Code (the "Transient Lodging Tax"). The percentage amount of Transient Lodging Tax to be paid to ES shall be 45% of first \$2,000,000 collected in each fiscal year; then 35% of the second \$2,000,000 collected in each fiscal year, and then 25% of any amount above \$4,000,000 collected in each fiscal year (the "Contract Amount"). The payments for the Contract Amount shall be then equalized over the year by quarter, subject to other terms specified herein.
- (b) Sums due herein are payable quarterly by the Town to ES with the first quarter payment due July 15, the second quarter payment due October 15, the third quarter payment due January 15 and the fourth quarter payment due April 15. The quarterly payments shall be based on an estimate of the current fiscal year's estimated annual Transient Lodging Tax revenues to be received by the Town. Additionally, if the actual Transient Lodging Tax collection is substantially different from the estimated Transient Lodging Tax, ES and the Town shall meet to review the quarterly estimated payments and adjust the quarterly payment if deemed appropriate by both parties.
- (c) The second quarterly payment, in October of each year (except for October 2020), will include an adjustment, up or down, made by the Town to reconcile the previous fiscal year's actual Transient Lodging Tax revenue collections with the quarterly amounts paid to ES during the previous fiscal year. After receiving the final collections information for the fiscal year, the Town will reconcile the estimated payments with actual amounts owed, whereby an additional amount may be due to ES if actual tax collections exceed the estimate of tax collections used to calculate the FY quarterly payments or whereby a refund or credit may be due to the Town if actual tax collections are less than the estimate of tax collections. Refunds and credits shall be made and applied from one party to the other in the manner reasonably agreed by the parties. If the Town's independent audit finds that the Arizona Department of Revenue final amounts require an adjustment, the Town will contact ES and initiate the adjustment on the next quarterly payment or the next several quarterly payments as reasonably agreed by the parties.
- (d) The payments of a portion of the Transient Lodging Tax revenues received by the Town applies only to the first 3.4% of the Transient Lodging Tax. It shall not be applied to revenues from any Transient Lodging Tax rate greater than 3.4% which may be levied by the Town in the future. During the term of this Agreement, should the Town decide to levy a Transient Lodging Tax greater than three and four-tenths percent (3.4%), then the parties will renegotiate the provisions of this Agreement related to the distribution of the increased amount of the Transient Lodging Tax.

**3. Performance Reports.** Within thirty days after the close of each fiscal year, ES shall submit to the Town a report on ES's performance under this Agreement. The report shall include an analysis of the effectiveness of the program of work, including documentation of year-end performance. At the direction of the Town Manager, these annual reports may also be presented to the Town Council at a regularly scheduled meeting or session.

**4. Board and Subcommittee Representation.** ES shall invite the Town Council to appoint one voting liaison to the ES Board of Directors during the term of this Agreement. This liaison must be a sitting member of the Council, which can include the Mayor. While board terms are typically for one year, the Town Council may appoint a new liaison at any point during the term of this Agreement at its sole discretion. The Town's voting liaison to the ES Board of Directors also shall be provided a seat on the ES public policy committee if and when such committee exists. Other Town representatives may be invited to participate on the public policy committee at the discretion of ES and approval of the Committee Chair.

**5. Financial Responsibility.** ES shall work with its executive committee leadership to explore opportunities for greater revenue diversity and work toward a budget reserve in line with industry best practices. In addition, ES shall engage with an independent consultant with Destination Marketing experience to assess financial and operational practices and accountability no less than once in the first three year-term of this Agreement and once in the two-year extension period; provided ES shall not be required to engage such consultant if ES experiences a significant decline (as reasonably determined by ES) in revenue or resources in the year prior to or during the year such consultant is to be engaged by ES. ES shall make the consultant's report available to the Town.

**6. Audit and Records.**

(a) **Annual Audit Report.** Within ninety (90) days after the end of each year, ES shall prepare and submit to Town at ES's expense an annual audit report of revenues and expenses related to this Agreement and an opinion thereon prepared by an independent certified public accounting firm. The audit report shall include an annual financial statement prepared in accordance with generally accepted accounting principles (GAAP) and the provisions of the Statement of Financial Accounting Standards No. 117 (Financial Statements of Not-for-Profit-Organizations). ES shall make available to Town all work papers and records produced by the auditor pertaining to the audit, or copies thereof, reasonably promptly after Town's request but in any event within ten (10) working days after Town's written request therefor. The Town's review of Experience Scottsdale's annual audit report in this section and section b below does not take on any obligation or responsibility by the Town regarding Experience Scottsdale's testing controls and business practices.

(b) **Inspection of Books.** Town or its agent may, by giving reasonable advance notice to ES and on the date or dates that Town and ES may reasonably agree upon, inspect ES's books related to the expenditure of funds under this Agreement for the purpose of ensuring compliance with this Agreement and applicable law; provided, however, that any such inspection does not unreasonably interfere with the regular business activities of ES and further provided that the Town shall bear any expense related to its inspection. ES agrees to reimburse the Town for any expenditures it makes utilizing funds pursuant to this Agreement, which are not related to the tourism and convention purposes stated herein.

**7. Law.** ES shall at all times herein comply with all laws of the Town of Paradise Valley, the County of Maricopa, the State of Arizona and the United States of America. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and the Town of Paradise Valley. The Town has determined that this Agreement is for a public purpose benefiting

the welfare of the Town and its citizens, and that the public receives a valuable and reasonable consideration for the funds expended herein.

**8. Insurance and Indemnity.** ES shall provide insurance and indemnification as follows:

- (a) **Indemnification.** To the fullest extent allowed by law, ES, its successors, assigns and guarantors, shall defend, indemnify and hold harmless Town, its agents, representatives, officers, directors, officials, and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, to the extent related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused by ES, its agents or contractors while performing work or services under this Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable under contract or applicable law. ES's indemnification obligations under this Section include damages related to, arising from or out of, or resulting from acts or omissions of ES while performing work or services under this Agreement that infringe the intellectual property rights of any third party. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope, magnitude and applicability of the insurance provisions.
- (b) **Insurance.** Without limiting any of its obligations or liabilities, ES, at ES's own expense, shall purchase and maintain the hereinafter stipulated minimum insurance:
  - i. All insurance shall be from a company or companies lawfully authorized to do business in the State of Arizona with an A.M. Best, Inc. rating of B++6 or above with policies and forms satisfactory to Town.
  - ii. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Town, constitute a material breach of this Agreement.
  - iii. ES's insurance shall be primary insurance, and any insurance or self-insurance maintained by Town shall not contribute to it. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect Town.
  - iv. The policies shall contain a waiver of transfer rights of recovery (subrogation) against Town, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of ES under this Agreement.
  - v. The policies may provide coverage that contains deductible or self-insured retentions. ES shall be solely responsible for any deductible and/or self-insured retention.
  - vi. The policies shall be in place by no later than ten (10) days after the date of this Agreement.

- vii. Within 10 working days after notice from Town, ES shall provide to Town certified copies of any or all of the required policies and/or endorsements. Town shall not be obligated, however, to review same or to advise ES of any deficiencies in such policies and endorsements, and such receipt shall not relieve ES from, or be deemed a waiver of Town's right to insist on, strict fulfillment of ES's obligations under this Agreement.
- viii. The insurance policies required by this Agreement, except workers' compensation and fidelity/crime insurance policies, shall name Town, its agents, representatives, officers, directors, officials, and employees as additional insureds.
- ix. Required Coverage. ES shall cause to be in effect the following insurance:
  - 1) General Liability. ES shall maintain "occurrence" form Commercial General Liability insurance with a limit of liability not less than \$1,000,000 for each occurrence with a \$2,000,000 Products and Completed Operations Limit and \$2,000,000 General Aggregate Limit. The policy shall be primary, and include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement. Such policy shall contain a severability of interest provision. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.
  - 2) Automobile Liability. ES shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, each accident with respect to ES's owned, hired, and non-owned vehicles assigned to or used in performance of ES's work or services under this Agreement. If any Excess insurance is utilized to fulfill the requirements to this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.
  - 3) Worker's Compensation. ES shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of ES's employees engaged in the performance of the work or services under this Agreement, and Employer's Liability insurance of not less than \$100,000 for each accident,
- x. \$100,000 disease for each employee, and \$500,000 disease policy limit. In case any work or services under this Agreement are subcontracted, ES shall require all subcontractors to provide the same insurance requirements as cited above for ES to protect Town.
  - 1) Fidelity Insurance. ES shall purchase and maintain fidelity and crime insurance coverage with a limit of \$250,000 per loss.
  - 2) Other Insurance. ES shall maintain any other insurance coverage or amounts of insurance Town may reasonably require from time to time for the protection of the public, Town and its employees, officials,

representatives, officers, directors, and agents. Town may elect by written notice to ES to require additional coverage or increased amount of any insurance to account for changes in risks, inflation, or any other factor that Town reasonably determines to affect the prudent amount of insurance to be provided by ES.

- (c) **Certificates of Insurance.** Prior to commencing work or services under this Agreement, ES shall furnish to Town certificates of insurance or formal endorsements as required by the Agreement, issued by ES's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement. In the event any insurance policy(ies) required by this Agreement is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or services and as evidenced by an annual Certificate of Insurance.

9. **Independent Contractor.** ES is an independent contractor and shall in no way be deemed to be an employee of the Town.

10. **Term and Renewal.** The term of this Agreement shall be from July 1, 2020 through June 30, 2023, unless sooner terminated as provided herein. Upon notice of termination, any amounts owed through the date of termination, according to the terms of this Agreement, will be paid on a prorated basis. This Agreement may be renewed at the Town's option for up to two additional one-year terms covering July 1, 2023 through June 30, 2024 and July 1, 2024 through June 30, 2025. If Town desires to renegotiate the payment terms of this Agreement at the end of year 3 or 4, written notice must be provided to ES by January 15<sup>th</sup> of said term prior to the end of the term but if the parties fail to agree upon the renegotiated terms by the end of year 3 or 4, as applicable, then ES may terminate this Agreement by giving written notice to the Town prior to the end of the term.

11. **Termination.** Town may, without prejudice to any other right or remedy, terminate this Agreement for any cause or reason or without cause or reason on one hundred twenty (120) days written notice. Upon notice of termination, any amounts owed through the date of termination on a prorated basis, according to the terms of this Agreement, shall be paid. Except for the foregoing, no person shall be entitled to any compensation damages or other remedy from Town if this Agreement is terminated pursuant to the terms of this paragraph or other terms of this Agreement.

12. **Factors Considered in Renewal.** The Town shall consider, but not be limited to, the following factors in determining whether or not to renew or extend this Agreement: ES's ability to help generate Transient Lodging Tax revenues received by the Town; ES's ability to meet its program of work that was prepared with input received by the Town's resort general managers on the performance of ES. ES is expected to produce regular reports, at least annually, but preferably more frequently, demonstrating its progress toward aiding the Town in the generation of non-resident taxes.

13. **Sole Agreement.** No other agreements or representations of any kind have been made by and between the parties hereto. ES's consent is not required for the Town to increase the Transient Lodging Tax beyond 3.4%.

14. **Conflict of Interest.** This Agreement is subject to cancellation pursuant to A.R.S. 38-511.

15. **Assignment Prohibited, Agreement Binding.** This Agreement shall extend to and be binding upon the heirs, administrators, executors, successors and permitted assigns of the respective parties.

Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

16. **Notices.** All notices pursuant to this Agreement shall be in writing and shall be deemed properly given if sent by facsimile, personal delivery, by certified mail or by courier, postage prepaid, addressed to the addresses set forth below. Notice shall be deemed effective on the date of actual receipt or five (5) days after the date of mailing, whichever is earlier.

17. **Amendments.** Amendments to this Agreement shall be made in writing and executed by the parties below.

18. **Default, Force Majeure.** If any party fails to observe or perform any of the provisions of this Agreement and such failure is not cured within twenty (20) days after notice by the affected party, then such party shall be in default and without further notice, the affected party may at any time thereafter terminate this Agreement and recover damages resulting from the default or effect a cure on the defaulting party's behalf and all costs and expenses so incurred by the curing party together with interest at the rate of ten percent (10%) per annum shall be due and payable by the defaulting party. However, if a default cannot reasonably be cured within twenty (20) days, the defaulting party shall not be in default of this Agreement if it commences to cure the default within such twenty-day period and diligently pursues such cure to completion. Either party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to acts of God, war, national disasters, strikes, fire, pandemic, or other comparable events, or as a result of any lawful order issued by the United States government or an official of the State of Arizona or Town, or for any reason beyond the control of the parties; and in such event, this Agreement shall be suspended during such period and for as long as such conditions shall exist and the term hereof shall not be extended.

19. **Immigration Warranty.** ES shall comply with immigration laws as follows:

- (a) Under the provisions of A.R.S. §41-4401, ES hereby warrants to the Town that it will comply with, and is contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter, the "Immigration Warranty").
- (b) A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall permit the Town to terminate this Agreement, at the sole discretion of the Town.
- (c) Town retains the legal right to, if it has reason to believe that the Immigration Warranty has been breached, inspect the citizenship or immigration status papers (i.e., I-9 and/or W-9) of any employee of ES who works on this Agreement to ensure compliance with the Immigration Warranty. ES agrees to assist the Town in regard to any such inspections at no out of pocket cost to ES.
- (d) The Town may, at its sole discretion and sole expense, conduct random verification of the citizenship or immigration status employment records (i.e., I-9 and/or W-9) of ES to ensure compliance with the Immigration Warranty if the Town has reason to believe that the Immigration Warranty has been breached, provided that such random verification does not unreasonably interfere with the regular business operations of ES.

- (e) ES shall not be deemed to have materially breached the Immigration 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(A). Voluntary compliance may be available through the Arizona Attorney General's Voluntary Employer Enhanced Compliance Program. In furtherance of this paragraph, ES may request that any subcontractors performing work on matters related to this Agreement execute a Certification and Indemnity ("Certification") in the form attached hereto as Exhibit B and incorporated herein by this reference. The Town hereby agrees that, for purposes of this Agreement, any subcontractor that executes the Certification will be conclusively deemed compliant with ES's Immigration Warranty.

**20. Prohibition Against Boycott of Israel.** ES certifies that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

**21. Non-liability of Town Officials and Employees.** No member, official or employee of Town shall be personally liable to ES, or any successor in interest, in the event of any default or breach by Town or for any amount that may become due to ES or its successor on any obligation related to this Agreement.

**22. Counterparts.** This Agreement may be executed counterparts and by facsimile/email .pdf signature. Each counterpart, taken together, shall constitute one integrated document. Facsimile/email .pdf signatures shall be acceptable as original signatures.

**[Signatures appear on following page.]**



**IN WITNESS WHEREOF**, the parties have entered into this Agreement effective on the date first above written.

**TOWN OF PARADISE VALLEY**

6401 E. Lincoln Drive  
Paradise Valley, AZ 85253  
Phone: 480-948-7411; Fax: 480-951-3715

**SCOTTSDALE CONVENTION &  
VISITORS BUREAU, INC.**

4343 N. Scottsdale Road, Suite 170  
Scottsdale, AZ 85251  
Phone: 480-421-1004; Fax: 480-421-9733

By: \_\_\_\_\_  
Jill Keimach, Town Manager

By: \_\_\_\_\_  
Kate Birchler, Chair of the Board

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Duncan Miller, Town Clerk

By: \_\_\_\_\_  
Rachel Sacco, President & CEO

APPROVED AS TO FORM:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew Miller, Town Attorney

## **Exhibit A**

### **Strategic Business Plan**

[See attached.]

## Exhibit B

### Certification and Indemnity

This CERTIFICATION AND INDEMNITY (this "Certification") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a(n) \_\_\_\_\_ ("Subcontractor") in favor of the **TOWN OF PARADISE VALLEY**, a municipal corporation of the State of Arizona ("Town") and the **SCOTTSDALE CONVENTION & VISITORS BUREAU, INC.** ("ES" and, together with the Town, the "Indemnified Parties").

WHEREAS, the Town and ES entered into an Agreement dated as of June \_\_, 2020 (the "Agreement"), whereby the ES is providing certain services to the Town as more particularly described in the Agreement.

WHEREAS, this Certification is being delivered to the Indemnified Parties pursuant to Section 19 of the Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Subcontractor hereby certifies and agrees as follows:

1. Subcontractor has complied, and will at all times during the term of its agreements with ES comply, with the employment verification provision 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(A) (collectively, "Employment Verification Laws").

2. Subcontractor hereby agrees to indemnify, defend and hold harmless the Indemnified Parties, and their successors, assigns, shareholders, officers, directors, employees, attorneys and agents for, from and against, and promptly pay on demand or reimburse each of them with respect to any and all liabilities, claims, demands, losses, damages, costs and expenses (including without limitation, reasonable attorneys' and paralegals' fees and costs) for all actions or causes of action of any and every kind or nature whatsoever asserted against or incurred by any of them by reason of or arising out of or in any way related or attributable to any violation of or noncompliance by Subcontractor with the Employment Verification Laws or applicable laws concerning employment verification or similar activities. Subcontractor's obligations under this Section shall survive the termination of Subcontractor's agreements with ES.

IN WITNESS WHEREOF, Subcontractor has executed this Certification as of the date first written above.

**"SUBCONTRACTOR"**

\_\_\_\_\_, a(n)

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_