

## **DESTINATION AND MARKETING SERVICES AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS AND VISIT SAN ANTONIO**

The City Council (the *Council*) of the City of San Antonio, Texas (the *City*), a home-rule municipality operating under the City's Home Rule Charter, has approved the City's engagement of Visit San Antonio (VSA, and together with the *City*, the *Parties*), a Texas non-profit corporation organized under Chapter 22, Texas Business Organizations Code, as amended (*Chapter 22*), to provide certain Services (defined below) as set forth in this Destination and Marketing Services Agreement (the *Agreement*), entered into by the Parties pursuant to Section 351.101(c), Texas Tax Code, as amended (the *Tax Code*).

### **RECITALS**

**WHEREAS**, the City and VSA recognize the visitor industry as a key economic generator for the City, with an estimated \$13.4 billion annual economic impact providing more than 122,500 local jobs; and

**WHEREAS**, in an effort to replicate and continue the success achieved by the City's Convention & Visitors Bureau (CVB), the City desires to engage VSA whose initial role the City expects and acknowledges will mirror or exceed that of the CVB to perform the *Services* (as defined below) in consideration of the compensation provided in this Agreement; and

**WHEREAS**, VSA's provision of the Services is expected to contribute to the achievement of the goals of both Parties; and

**WHEREAS**, the City and VSA hereby find and determine that entering into this Agreement is in the best interests of the residents of the City and surrounding areas, the industries served by VSA, and the City's tourism market; **NOW THEREFORE:**

In consideration of the mutual promises and covenants contained herein, the City and VSA agree as follows:

### **I. TERM**

1.1 Term. The term of this Agreement shall commence on October 1, 2016, and will remain in full force and effect through September 30, 2021 (the *Term*), with an extension option of up to 5 years from the end of the Term, unless such Agreement is terminated, pursuant Article VII herein.

1.2 Appropriations. The City agrees, as a part of its budget process and in connection with the City's collection of Hotel Occupancy Tax (HOT) under the Tax Code, to appropriate an amount to VSA as described in Article III below.

### **II. SCOPE OF SERVICES**

2.1 Services for Compensation. VSA agrees to provide the services described in

Section 2.2 below (the *Services*) in exchange for the compensation described in Article III of this Agreement. The City acknowledges that VSA, as permitted by the Tax Code, may contract with various entities and organizations unaffiliated with the City, and that under those agreements and funds derived from those agreements, VSA may perform other services and activities in accordance with VSA's Certificate of Formation and Bylaws. The Parties understand that funds provided by the City through this Agreement must be expended in accordance with the Tax Code (particularly the provisions governing the expenditure of revenue derived from HOT).

2.2 Scope of Services. VSA shall work to: (1) attract leisure visitors to the City; (2) attract and secure meetings, events and conventions to the City, including but not limited to, the City-owned Henry B. Gonzalez Convention Center (*HBGCC*) or other City-owned facilities or venues as coordinated through the City; and 3) serve as a liaison to local businesses (including hoteliers, sports foundations, and other similar entities) and City departments to attract leisure visitors, meetings, events and conventions to the City. VSA, subject to being supplied the appropriate funding pursuant to this Agreement, shall:

(A) carry out the actions defined in the applicable annual *Business Plan* (defined below) related to attracting leisure visitors, meetings, events and conventions to the City and as outlined in VSA's Articles and Bylaws and expanding the City's approach to recruiting, retaining and expanding large, national meetings, conventions and events as identified by that applicable annual Business Plan increasing the visibility of the City on a nation-wide level through media and public relations efforts, and, where appropriate, coordinating and working with public and private partners and organizations involved in local efforts to attract and retain large, national conventions and events;

(B) utilize research reports on economic trends, growth sectors, and regional competitive strengths and weaknesses, as is customary in the destination and marketing organization industry, as specified in the applicable annual Business Plan, in order to assist the City in making strategic decisions in its efforts to attract leisure visitors, meetings, events and conventions to the City and in accordance with VSA's Bylaws;

(C) provide marketing and imaging campaigns for the City's tourism and convention industry, as specified in the annual applicable Business Plan and in accordance with the covenants regarding intellectual property as described in Article XII;

(D) inform and partner with the City regarding high-profile or significant recruitment/attraction efforts; and

(E) provide, in appropriate detail in accordance with the Tax Code, reports listing the VSA's expenditures made with HOT, and VSA's progress in performing the Services in conformance with implementation of the annual Business Plan, pursuant to Section 2.3(C);

2.3 Hosting Obligations. The term "Hosting Obligation", as commonly referred to by the City and CVB in previous dealings, is a contractual obligation the CVB negotiated with an event holder for choosing the City as the host city for its convention, meeting, or special event. Generally, Hosting Obligations are offered to organizations based upon (1) the competitive environment, (2) the forthcoming convention's synergies with primary economic drivers of the

San Antonio Region, or (3) the likelihood of the event producing a significant visitor-related economic impact which benefits the City's economy. The Parties agree, pursuant to the provisions articulated throughout this Agreement, to coordinate prospective Hosting Obligations with potential event holders for promoting, marketing, and assisting in developing the City as a premier leisure visitor and convention and meeting location, all as purposes set forth in VSA's Articles.

While the City will maintain within its control the account and funds associated with Hosting Obligations, VSA shall retain the responsibility of implementing the approval process in place to ensure Hosting Obligations are given to event hosts only when warranted and approved prior to the proposed event. VSA will continue to monitor and evaluate the Hosting Obligations' progress through review of rental records, food and beverage revenues reported by the HBGCC's authorized catering vendor, actual hotel nights rented, and other key documentation to ensure the event hosts met the thresholds to receive the City's Hosting Obligations.

#### 2.4 Business Plan.

(A) Development. Within sixty (60) days of the execution of this Agreement, and thereafter before November 30 of each year, VSA shall prepare a draft Business Plan outlining how it proposes to deliver the Services within the fiscal year that is the subject of that draft Business Plan. In Year 1 of the Agreement, the draft Business Plan shall include the initial efforts of VSA for the beginning of Fiscal Year 2017 (which is the period ending September 30, 2017). The draft Business Plan shall describe the methodology and steps then expected to be followed by VSA to deliver the Services within the specified fiscal year, and shall include a budget that indicates in appropriate detail how the funding provided by the City for that fiscal year will be expended. VSA shall work to finalize the draft Business Plan, and shall submit the draft Business Plan to its Board of Directors (the *Board*) for approval. After approval by the Board, the approved Business Plan shall become incorporated into this Agreement as Exhibit A. The Parties understand that circumstances during any period of time may differ from those contemplated when the Business Plan was approved; therefore, amendments to the Business Plan may be made by VSA within any fiscal year. However, any material changes to the approved Business Plan affecting the expenditure of HOT must be approved in writing by VSA's Board prior to the implementation of such material changes.

(B) Business Plan Performance Targets. As part of the development of each annual Business Plan, VSA shall establish "Performance Targets" against which VSA's execution of the Business Plan, to include its revenue enhancement efforts and goals, is evaluated (the *Revenue Enhancement Plan*). The Revenue Enhancement Plan will be updated as part of the annual Business Plan and will identify targets for potential funding sources of additional non-HOT revenues to include private funding sources and how such funding is proposed to be utilized. If changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond VSA's reasonable control arise, the then current Performance Targets may be revised, with the prior written approval of the Board.

(C) Reporting. VSA will maintain reasonable levels of communication with the City's Convention & Sports Facilities Department, Finance Department, and any other designated departments of the City throughout the Term of this Agreement to ensure

coordination between the City and VSA as to VSA's efforts to implement the Business Plan. VSA shall provide, as required by the Tax Code and this Agreement, various reports to the City that describe in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters to the extent permissible under applicable law) its progress in implementing the Business Plan and meeting Performance Targets, as specified in this Agreement, as well as providing the City with periodic reports in accordance with the requirements as set forth in the Tax Code and on any activity that VSA believes to be of interest to the City. VSA agrees to report to the City as follows:

- (i) quarterly and annual written status reports and general accountings, and
- (ii) on reasonable request of the City, periodic update presentations that address the Services provided pursuant to this Agreement.

2.5 Booking Policy. Under the terms of this Agreement, VSA is the primary entity responsible for the booking of space within the HBGCC. VSA's ability to book space within the HBGCC is subject to the City's rights as owner and operator of the HBGCC to determine whether such bookings are in the best interests of the City. The City shall have the right to place priority bookings within the HBGCC on an exception basis, based upon such determination by the City as to the benefit provided by such booking and coordinated with VSA.

(A) Subject to the City's rights as described above, VSA shall have inventory rights to space within the HBGCC for meetings, conventions and events booked twelve (12) months in advance. Additionally, VSA may book meetings, conventions, and events with less than twelve (12) months lead time upon the prior written approval of the City.

(B) Regardless of the processes outlined above, the City and VSA agree to collaborate in booking the HBGCC with the purpose of maximizing bookings of the HBGCC and increasing tourism to the City in accordance with VSA's purposes as set forth in the Articles.

2.6 Sales Responsibilities. VSA is responsible for the marketing and direct solicitation of group business for the HBGCC, including but not limited to representation at key industry events and trade shows, management of customer engagement opportunities, group familiarization trips, and customer sales calls. VSA is responsible for managing group site inspection and pre-planning meetings for groups that require the use of the HBGCC.

2.7 Group Sales Leads. VSA is responsible for the preparation of group sales' leads for distribution to hotels and industry partners.

2.8 Managing Group Room Blocks. VSA is responsible for working in conjunction with hotel partners to secure group room blocks necessary to host group events at the HBGCC. VSA shall determine each group's requirements and generate a lead to forward to local hotels, as well as prepare packages and presentations to the group's planner.

2.9 Booking Window. Subject to Section 2.5 above, VSA is responsible for managing the meeting room inventory at the HBGCC for groups requesting space up until 12 months in advance of an event. For any meetings and events occurring within 12 months of the current date, the HBGCC will be responsible for approving that space. If a group opportunity arises within 12 months of the start date of an event, and appropriate meeting space is available, VSA may confirm the space after receiving approval from the HBGCC.

2.10 Reserving Meeting Space and Price Concessions.

(A) Contracting Space. VSA is responsible for reserving meeting space necessary to host group functions. The HBGCC booking department is responsible for providing the cost estimate for meeting space and preparation of contracts presented to the customer.

(B) Pricing Discounts. Any pricing discounts regarding the meeting space and exhibit hall rentals must be approved in advance by VSA leadership before any offer is extended to group planners. If requests for pricing discounts occur after the City's annual budget is approved, VSA leadership is responsible for asking HBGCC leadership to assist in offsetting any rental costs that are not included in the annual Hosting Obligations budget. Only the HBGCC leadership shall negotiate with building vendors to provide customer discounts for services performed.

(C) Change in Pricing. Any proposed room or space rental rate changes shall be presented to the Board for feedback prior to presentation of the budget to the City Council for approval.

(D) Partner Subsidies or Rebates. If hotel partners are agreeable to subsidizing meeting room rental, VSA is responsible for subsidy negotiation with hotel partners and additionally ensuring the process for applying subsidies or rebates is clearly defined with clients and hotels. In no instance will the HBGCC be responsible for negotiating or collecting subsidies or rebates from hotels.

(E) Space Booking Restriction. VSA is the only entity permitted to approve requests from hotels to utilize meeting or exhibit space within the HBGCC including requests within the 12 month booking window.

2.11 Room Block Agreement. VSA acknowledges the City's existing Room Block Agreement with the Grand Hyatt Hotel adjacent to the HBGCC. The City retains all rights and obligations under the Room Block Agreement including the rights to amend, re-negotiate or terminate such agreement; however, any changes shall be coordinated with VSA to ensure minimal impact to group and convention business and performance standards. VSA agrees to abide by the terms of the Room Block Agreement and, additionally, to enforce the provisions of the Room Block Agreement on behalf of the City, subject to VSA's pre-determined booking arrangements under the Room Block Agreement.

2.12 Utilization of City-Owned Facilities. The City acknowledges that, to ensure VSA's success in performing the obligations set forth herein, the City will permit VSA access to

utilize City-owned facilities, in accordance with the Booking Policy described in Section 2.5 hereof, subject to the City's priority of booking, at no cost to VSA (including parking spaces as described in Section 2.14 below), subject to date availability, for the purpose of effectuating the objectives of VSA and the City as set forth in this Agreement and the Articles. In connection with events solicited, organized, or otherwise planned in which VSA is involved, the City permits VSA access and use of catering services as utilized by the City, including any waiver or reduction of the City's traditional commission.

2.13 River Barges. VSA retains the right to secure river barges under City agreement with Rio San Antonio Cruises, or its successors or assigns, at no additional charge to VSA. Utilization is based on a five (5) year average.

2.14 Parking Spaces. The City shall provide five (5) parking passes for VSA use in City-owned garages and at the City's airport provided such passes are used in the course of VSA's business recruitment or attraction efforts.

2.15 Board of Directors. VSA will at all times maintain a Board as specified in VSA's Articles and adopted Bylaws. The Board's primary responsibilities include fiduciary oversight, provision of strategic direction, and serving in an advisory role for the City's Convention & Sports Facilities Department.

2.16 Feedback. VSA is responsible for providing an automated client feedback survey to all groups meeting at the HGBCC or groups that otherwise use VSA's destination services' department. Surveys or other feedback material shall be sent to the customer within 10 business days following the completion of the meeting. VSA will subsequently share this survey with appropriate City staff within a reasonable time.

### **III. COMPENSATION TO VSA**

#### **3.1 Compensation.**

(A) Transition Period. For the period of October 1, 2016 through March 31, 2017, the City will provide VSA with ongoing City services and support consistent to those provided to its internal City departments. Such services and support shall include, but not be limited to, human resources support, finance department support, access to and utilization of the City's accounting system known as SAP, legal services, access to, use of, and payment for consultants, information technology services (e.g., access to staff, utilization of applicable servers, telecommunication systems, email systems, etc.) and other ancillary support services as hereafter determined by the City and VSA to be necessary to effectuate the transition of the functions of the City's CVB to VSA (the *Transition*). In the event the City and VSA require additional time to complete the Transition, the Parties may, by mutual agreement, extend the Transition period by up to six (6) months.

(B) Transition of Services. Effective April 1, 2017, all functions of the CVB shall transition to VSA and the City shall commence to provide compensation to VSA in return for the provision of the Services described in Article II.

(i) The adopted budget for the support of VSA for Fiscal Year 2017 shall be \$23,330,624.00, which is inclusive of the base budget and indirect costs to support the VSA.

(ii) By March 28, 2017, the City shall pay the VSA an advance (the Advance) of SIX MILLION DOLLARS AND NO CENTS (\$6,000,000) to support VSA's operations for the period beginning April 1, 2017 through June 30, 2017. Following the Advance, subsequent payments will be made to VSA in equal installments on July 1, 2017, August 1, 2017 and September 1, 2017 for the remaining amount of Fiscal Year 2017's adopted budget to provide necessary funding after the deduction of: (1) actual expenses paid by the City for the period of October 1, 2016 through March 31, 2017 in support of VSA's operations; and (2) the Advance. Total financial support to the VSA for Fiscal year 2017 shall not exceed \$23,330,624.00.

(iii) All funds for "Hosting Obligations", as previously described herein, shall be maintained in an account held by the City. VSA shall include, through quarterly reporting, any current and future requirement for Hosting Obligations. Additionally, during the preparation of the City's annual budget process, VSA will provide the current and future requirements of Hosting Obligations whereby the City shall subsequently provide adequate and reasonable funding to ensure the Hosting Obligations account maintains sufficient reserves.

(iv) The City and VSA will work jointly to determine if any mid-year adjustment related to indirect costs and budgeted assessments is necessary during Fiscal Year 2017 based on: 1) VSA's required services; and 2) the City's ability to provide such adjustment.

(C) FY 2018. Beginning on October 1, 2017, the City shall target 35 percent (35%) of the net HOT revenue collected, defined as HOT revenue minus the provision of payment satisfying the City's lease payment (debt service) obligations of the City of San Antonio, Texas Public Facilities Corporation as well as any amount set aside for the defeasance of debt as compensation to VSA for the performance of Services. Each year during the City's annual budget process, the targeted percentage, subject to adjustment as outlined below, will result in an annual appropriation to be paid to VSA. The targeted annual percentage may be adjusted by the City during the City's annual budget process based upon the annual update to the HOT pro forma in order to make a determination on whether or not adjustments are necessary to increase, maintain, or reduce operating expenses due to factors including changing economic conditions, requirements of VSA, requirements of the City and funding levels of the contingency funds and lease payment as set forth in the hereafter referenced HOT financial policy. The City will actively manage operating expenses to be funded with HOT in keeping with the HOT Funds Financial Policy approved by City Council on September 20, 2012 through Resolution No. 2012-09-20-0038R.

The annual HOT appropriation as approved by the City Council in accordance with the

provisions and requirements of the Tax Code, shall be paid to the VSA in equal monthly installments (1/12 of the appropriated budget) beginning October 1 of each Fiscal Year, beginning October 1, 2017. The monthly payments will be made in advance on the first day of each month.

(D) Upon the conclusion of each fiscal year and completion of the City's independent annual audit, the annual amount appropriated in support of the VSA for the fiscal year immediately closed will be compared to the targeted percentage of 35% of the actual net HOT revenues recorded for that fiscal year. Any surplus or deficit may be considered for an additional adjustment to VSA at the City's discretion as part of a mid-year adjustment to the current fiscal year appropriation. VSA must also provide an amended Business Plan detailing how the surplus or reduction of funds will be utilized or budgeted expenses adjusted.

(E) VSA shall be the sole provider of the Services delineated in Article II hereof. Based upon the City's recognition of the valuable contributions the CVB previously provided to the City, and the Services VSA will subsequently provide under this Agreement, the City hereby agrees to contract exclusively with VSA and shall not engage in practices reasonably determined to be in competition with VSA as the sole provider of the Services hereunder including, but not limited to, the management and supervision of travel and tourism promotion and programs and activities funded with revenue from HOT authorized under the Tax Code pursuant to this Agreement. The City further agrees that during the Term and any extension of this Agreement, the City will not engage, either directly or indirectly, in any manner in funding, contracting, or otherwise entering into any agreement undertaken internally or through external parties for tourism promotion efforts with any entity other than VSA. The City retains the right to expend money for promotion efforts on its own behalf, including its facilities, and to fund entities whose purposes may include providing promotion services so long as visitor and convention services are not such entity's primary purpose and such entity is not created or otherwise effectuated to perform the services for which VSA was created.

3.2 Forecasting. VSA shall inform and provide input on the establishment of the five year forecast and the adopted budget appropriation for HOT Revenues.

3.3 Use of Funds. The funding provided by the City under this Agreement shall be used solely in connection with VSA providing the Services described in Article II, pursuant to the budget prepared as part of the approved Business Plan. VSA shall segregate all funds provided under this Agreement into a separate account and shall not commingle any funds supplied by the City with the VSA's general funds or other funds received by any other entity.

3.4 Collateral Requirements. VSA's depository must provide and maintain collateral for all uninsured collected balances in VSA's accounts in accordance with the requirements of Chapter 2257, Texas Government Code, as amended. Collateral maintained in the custody of a third-party institution. Collateral for all time and demand deposits of VSA shall be collateralized with a margin of one hundred and two percent (102%). All collateral terms shall be memorialized in VSA's investment policy to be subsequently adopted by the Board as further described in Section 3.5 below.

3.5 Investment Policy. All public funds on deposit from time to time in VSA's account(s) with its depository shall be invested and reinvested by its depository in any investment authorized pursuant to Chapter 2256, Texas Government Code §2256.001 as amended (Chapter 2256). VSA shall comply with Chapter 2256 in the purchase, sale, and investment of public funds under its control. VSA and the City agree that the Board will subsequently develop and adopt an investment policy, based upon the City's Investment Policy, and shall invest public funds as permitted by Chapter 2256, in compliance with the investment policy approved by the Board, and according to the standard of care prescribed by the Investment Act.

3.6 Additional Services. Should any additional services outside the scope of this Agreement be requested and authorized by the City Manager or her designee, and accepted by VSA, VSA shall receive additional consideration in the form of separate compensation for those services over and above the compensation discussed in this Article III, at an amount agreed to by the City Manager or her designee and VSA.

3.7 Invoices. VSA shall submit City invoices to:

City of San Antonio  
Convention & Sports Facilities Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

#### **IV. AUDIT**

4.1 VSA's Audit. In accordance with its standard practices, VSA shall obtain an audit conducted by an independent auditing firm annually during the Term of this Agreement. The audit shall include an examination of the separate account maintained to receive and disburse funds provided by the City to VSA pursuant to this Agreement. A copy of the Audit Report and Management Letter prepared as a result of the audit shall be provided to the City no later than January 15 of the close of the fiscal year.

4.2 City's Audit. The City or its authorized representative shall at all reasonable times, on ten business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of VSA directly related to the funds provided to VSA under this Agreement, to determine the accuracy of reports made under this Agreement. The cost and expenses incurred by the City incident thereto shall be the sole responsibility of and borne by the City. Those records shall be maintained by VSA for a period of four (4) years after the termination of the initial Term of this Agreement and any applicable extension period, and shall be made available for inspection and/or audit by the City or its agents at VSA's place of business. Nothing in this Agreement shall be deemed to give the City authority to direct, question, review, audit, or otherwise influence the expenditure of any funds that are not directly paid to VSA by the City.

4.3 Dispute Findings. Either VSA or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within thirty (30)

days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

4.4 Scope. Knowledge of VSA's financial condition is essential to the City due to its reliance on VSA in undertaking the functions of the City's CVB. Therefore, it is necessary for the City to have access to review VSA's audits, reports or other financial information. Upon ten (10) days notice, VSA shall make such information available for City's review, unless an exception applies under current applicable law for withholding such information.

## **V. DOCUMENTS**

5.1 Documents. The parties recognize that, to be successful, VSA depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that VSA would not achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without maintaining that confidentiality. Accordingly, the Parties acknowledge that certain writings, documents or information produced by or submitted to VSA in the course of its execution of the Services will be the sole property of VSA, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, VSA will in good faith share information derived from those writings or documents with the City and, if any writings, documents, or information are deemed non-proprietary or non-privileged, provide copies of those writings or documents to the City. VSA understands and acknowledges that the City has the right to use those non-proprietary writings, documents, and information as the City desires, without restriction. If any "open records" or equivalent request is made of the City relating to this Agreement or the Services, the City shall promptly advise VSA, and the parties shall work cooperatively and in good faith to preserve VSA's trade secrets, proprietary documents, and confidential information, as VSA's subjection to Texas transparency laws is limited in scope. VSA reserves the right to redact its documentation to protect proprietary information. In all events, the City shall not provide any information or documents that VSA considers proprietary to any third party without VSA's prior written consent, unless the City is legally obligated to do so and so advises VSA in writing, of which VSA shall have the opportunity to present its objection and legal authority for withholding requested information. In addition, any third-party requests to VSA for records relating to this Agreement under Chapter 552, Texas Government Code, as amended (Chapter 552) shall be coordinated with the City. The City shall provide VSA, in accordance with Chapter 552, the opportunity to submit third-party briefs to the Texas Attorney General to receive an Open Records Decision.

5.2 Documents to the City. Upon expiration or termination of this Agreement, VSA shall transfer to the City true and correct copies of any non-proprietary writings, documents, or information in the possession of VSA and produced pursuant to the terms and conditions of this Agreement.

## **VI. RECORDS RETENTION**

6.1 Records. VSA shall take commercially reasonable care in their maintenance of complete and accurate documents, papers, and records, and other evidence pertaining to the

Services and funding provided for in this Agreement, and shall make such documents available to the City, at all reasonable times and as often as the City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 Retention. VSA shall retain any and all documents produced as a result of services or funding provided hereunder for a period of four (4) years from the date of termination of the Agreement or for such period as specified in VSA's compliance policy. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, VSA shall retain the records until the resolution of such litigation or other such questions.

## **VII. SUSPENSION/TERMINATION**

7.1 Suspension. The City may summarily suspend this Agreement with pay (continuing to fund the salaries and basic operations of VSA), if VSA breaches its obligations hereunder and fails to cure such breach within sixty (60) days after receiving written notice of suspension. The City shall promptly apprise VSA of the basis for suspension. Any such suspension shall remain in effect until the City determines that appropriate measures have been taken to ensure VSA's future compliance. Grounds for such suspension include, but are not limited to the following:

- (A). Failure to abide by any terms or conditions of this Agreement;
- (B). Failure to keep and maintain adequate proof of insurance as required by this Agreement; and
- (C). The violation of City, State, or federal laws by VSA as a result of the commission and conviction of a crime of moral turpitude.

7.2 Termination Defined. For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement or earlier termination pursuant to any of the provisions hereof.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII, the City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events:

- (A). the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI;
- (B). ceasing operations for a period of time exceeding twenty (20) days;
- (C). the expenditure of HOT on gratuities in the form of hosting and amenities offered or given by VSA outside reasonable industry business practices not previously approved by the Board in accordance with VSA's Code of Ethics, or any agent or representative of VSA, to any officer or employee of the City, Bexar County, State or business prospect with a view toward securing a

contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract; and

- d). failure to cure cause of suspension

7.4 Defaults With Opportunity for Cure. Should VSA default in the performance of this Agreement in a manner stated in this section, the same shall be considered an Event of Default. The City shall deliver written notice of the default, specifying in detail the matter(s) in default. VSA shall have sixty (60) calendar days after receipt of the written notice, in accordance with Article VIII Hereof, to cure the Event of Default. If VSA fails to cure the default within such sixty-day cure period, the City shall have the right, without further notice or adoption of a City ordinance, to terminate this Agreement in whole or in part as the City deems appropriate. The following actions are defaults that may be cured by VSA:

- (A). performing unsatisfactorily, as evidenced by failure to make adequate progress to meet VSA's pre-determined benchmarks for success, as outlined in the approved Business Plan;
- (B). failing to perform or failing to comply with any material term or covenant herein required as determined by the City;
- (C). bankruptcy or selling substantially all of VSA's assets; and
- (D). gratuitous expenditures made in hopes of securing favorable contracts.

7.5 Termination by Law. If any State or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, VSA shall cease all work being performed by VSA or any of its subcontractors on behalf of the City.

7.7 Provisional Period. Regardless of the method by which this Agreement is terminated, VSA agrees to provide a provisional period of termination for a period not to exceed two (2) months upon the City's request. During such provisional period, VSA will receive adequate percentage payments of HOT, to be distributed in accordance with Article III hereof, to continue to provide services as provided for, and for which it will be compensated, under this Agreement.

## **VIII. NOTICE**

8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its

deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

CITY:

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VSA:

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8.2 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party within a reasonable time period of such change.

## IX. INSURANCE

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, VSA shall furnish an original completed certificate(s) of insurance to the City's Convention & Sports Facilities Department and the City Clerk's Office, and which shall be clearly labeled "VSA Professional Services" in the Description of Operations block of the Certificate. The original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to VSA and the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City's Convention & Sports Facilities Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk.

9.3 Financial Integrity. VSA's financial integrity is of interest to the City; therefore, subject to VSA's right to maintain reasonable deductibles in such amounts as are approved by this Agreement, VSA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at VSA's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000

3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul>	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul> Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence	

9.4 Copies. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). So long as this Agreement is in effect, VSA shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided in Section 9.6 herein within 10 days of the requested change. VSA shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. VSA agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain the following required provisions:

- (A) name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects to operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- (B) provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and
- (C) workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by the City, VSA shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if VSA knows of said change in advance, or ten (10) days after the change, if VSA did not have actual knowledge of the change in advance. Such notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the City at the following

address:

City of San Antonio  
Convention & Sports Facilities  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

9.7 Failure to Maintain. In addition to any other remedies the City may have upon VSA's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order VSA to stop work hereunder, and/or withhold any payment(s) which become due to VSA hereunder until VSA demonstrates compliance with the requirements hereof.

9.8 Responsibility of VSA. Nothing herein contained shall be construed as limiting in any way the extent to which VSA may be held responsible for payments of damages to persons or property resulting from VSA's or its subcontractors' performance of the work covered under this Agreement.

9.9 Primary Insurance. It is agreed that VSA's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Agreement.

## **X. INDEMNIFICATION**

10.1 VSA covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY arising out of or resulting from VSA activities under this AGREEMENT, including any acts or omissions of VSA, any agent, officer, director, representative, employee, VSA or subcontractor of VSA, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VSA AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of the foregoing indemnity are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VSA shall advise the City in writing within three business days of any claim or demand against the City or VSA known to VSA related to or arising out of VSA's activities

under this Agreement and shall see to the investigation and defense of such claim or demand at VSA's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving VSA of any of its obligations under this paragraph.

## **XI. PROCUREMENT/SBEDA/SUBCONTRACTING**

11.1 Procurement. In the expenditure of funds provided under this Agreement, VSA shall follow State requirements applicable to the City under the Texas Local Government Code, as amended unless an exception under such statute applies. In addition, VSA shall implement City policy and procedures in expending such funds to include veteran outreach and local preference policies of the City.

11.2 SBEDA. The City, through City Ordinance No. 2016-05-19-0367, as amended, adopted and implemented a Small Business Economic Development Advocacy (*SBEDA*) Program (collectively, the *SBEDA Ordinance*). The City and VSA agree that, in accordance with the SBEDA Program, any contract(s) or agreement(s) above \$50,000 and funded under this Agreement shall, unless an exception pursuant to Section 2 of the SBEDA Ordinance applies, be subject to the SBEDA Affirmative Procurement Initiative(s) (*API*) and goal(s) as determined by the applicable SBEDA Goal Setting Committee (*GSC*). VSA shall follow the appropriate procedures for issuing formal solicitations as described in the City's SBEDA Program which includes submitting such solicitations to the GSC for a determination regarding the applicability of an *API(s)* and required date for return of a Subcontractor/Supplier Utilization Plan. In the event there is no formal solicitation process, VSA shall submit the proposal to the GSC for determination regarding the applicability of an *API(s)* and required date for return of a Subcontractor/Supplier Utilization Plan before negotiating the terms and conditions of a binding agreement with the selected Respondent or Respondent's proposal.

(A) Per the agreement, VSA will be required to annually submit a "SBEDA Action Plan", that will identify the anticipated VSA projects to be reviewed (or identifying permitted exceptions relied upon) under the SBEDA Ordinance.

(B) As specified in the SBEDA Ordinance, transactions subject these requirements involve the City as a party. Therefore, the SBEDA Ordinance does not apply in transactions involving VSA and private parties.

11.3 Written Agreement. Any work or services subcontracted by VSA hereunder with an annual value in excess of \$50,000.00 shall be by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of VSA. The City shall in no event be obligated to any third party, including any subcontractor of VSA, for performance of services or payment of fees.

## **XII. INTELLECTUAL PROPERTY RIGHTS**

12.1 Intellectual Property Rights. City is the owner of certain intellectual property, including images, trademarks, slogans, recordings, etc. previously used by CVB. So long as

VSA utilizes such intellectual property to perform the Services described in this Agreement, VSA shall receive a royalty-free, worldwide license to use such intellectual property during the Term of this Agreement. To the extent VSA prospectively utilizes previously registered intellectual property of the City, the City shall waive any infringement claims. VSA acknowledges that it is not the intent of this provision to divest the City of any ownership rights in its intellectual property nor to provide any ownership interest in VSA to the City's intellectual property.

12.2 The City acknowledges that VSA is the owner of the following items developed post execution of this Agreement: (1) all trademarks, trade dress, corporate names, and logos, together with the goodwill associated with any of the foregoing owned or developed (the *Marks*); (2) all ideas, inventions, works of authorship, know-how, processes, formulas, data, computer programs, improvements, discoveries, developments, designs, techniques, customer lists, devices, records, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, proposed products, business plans, or reproductions of any aforementioned items (the *Developments*); (3) all trade secrets and other confidential or proprietary information owned or developed by VSA for use its exclusive use (the *Trade Secrets*); (4) all registrations or applications for registration related to the foregoing (the *Registrations*, and collectively with the Marks, Developments, and Trade Secrets, the *Intellectual Property*); and (5) Intellectual Property created or arising from the delivery of Services under this Agreement, throughout the world.

### **XIII. INDEPENDENT CONTRACTOR**

VSA and the City covenant and agree that: 1) VSA is an independent contractor and not an officer, agent, servant or employee of the City; 2) VSA shall have control of and right to control, in its sole discretion, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and VSA; 3) the doctrine of respondeat superior shall not apply as between the City and VSA, its officers, agents, employees, contractors, subcontractors and VSA; and 4) nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between the City and VSA. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by VSA under this Agreement and that the City's authority to bind VSA is limited to the provisions of this Agreement.

### **XIV. CONFLICT OF INTEREST**

14.1 Ethics Code. VSA acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the City's Ethics Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities. VSA's Code of Ethics has similar provisions. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity,

or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

## **XV. LEGAL/LITIGATION EXPENSES**

15.1 Litigation Against the City. Under no circumstances will the funds received under this Agreement or any other City funds, be used, either directly or indirectly, to pay the costs associated with attorney fees incurred in any adversarial proceeding against the City or any other governmental or public entity constituting a part of the City.

15.2 Termination. During the term of this Agreement, if VSA files and/or pursues an adversarial proceeding against the City, the City, at its option, may terminate this Agreement and all access to the funding provided for hereunder if it is found that VSA has violated this Article.

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both the City and VSA, and subject to approval by the Council and the Board, as evidenced by passage of a resolution, or ordinance, as applicable, to that effect.

## **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, State or local laws, including but not limited to the City Charter, the City's Code, City ordinances or VSA's Articles, Bylaws or Code of Ethics, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as shall be permissible, legal, valid and enforceable.

## **XVIII. LICENSES/CERTIFICATIONS**

VSA warrants and certifies that, to its knowledge, VSA and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XIX. COMPLIANCE WITH LAWS**

VSA shall provide and perform all services required under this Agreement in compliance with all applicable federal, State and local laws, rules and regulations.

## **XX. NON-WAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

## **XXI. LAW APPLICABLE**

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXII. LEGAL AUTHORITY**

22.1 The signor of this Agreement on behalf of VSA represents, warrants, assures and guarantees that she has full legal authority, pursuant to Chapter 22, the Texas Non-Profit Corporation Act, the Tax Code, and a resolution adopted by VSA prospectively, to execute this Agreement on behalf of VSA and to bind VSA to all of the terms, conditions, provisions and obligations herein contained.

22.2 The signor of this Agreement on behalf of the City represents, warrants, assures and guarantees that she/he has full legal authority, pursuant to Article XI, Section 5 of the Texas Constitution, the City's Home Rule Charter, the Tax Code, and an ordinance adopted by the City Council on September 29, 2016 to execute this Agreement on behalf of the City and to bind the City to all of the terms, conditions, provisions and obligations herein contained.

## **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXV. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

- EXHIBIT A: Business Plan
- EXHIBIT B: Transition Plan
- EXHIBIT C: VSA Code of Ethics
- EXHIBIT D: Intellectual Property

## **XXVI. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties.

The Parties recognize that certain agreements, licenses and policies referenced herein and necessary to effectuate this Agreement, including but not limited to, VSA's Investment Policy, insurance policies, lease agreement pertaining to VSA's office space, and contracts and agreements delineating shared intellectual property between the Parties are currently in the process of formulation and will be finalized after the execution of this Agreement. Such agreements shall be executed prior to March 31, 2017, or if a six-month extension is granted under this Agreement, September 30, 2017.

*SIGNATURES APPEAR ON NEXT PAGE*