

**LEGENDS ENTERTAINMENT DISTRICT
MARKETING AGREEMENT**

This Legends Entertainment District Marketing Agreement (“Agreement”) is entered into as of _____, 2022 (“Effective Date”), between the City of Flagstaff, an Arizona municipal corporation, *dba* the Flagstaff Convention and Visitors Bureau (“City”), and Jefferson Street Signage District, LLC, an Arizona limited liability company, *dba* Legends Entertainment District (“Legends”).

RECITALS:

A. Legends serves as the entity which has the authority to develop, manage, sell, and maintain certain signage assets within a specific area of downtown Phoenix, Arizona known as the Legends Entertainment District (“District”), as shown on Exhibit A.

B. City desires to promote its tourism and business opportunities within the District.

AGREEMENT:

1. Term. The term of this Agreement will begin as of July 1, 2022, and end on June 30, 2024 unless sooner terminated or renewed as provided in this Agreement (“Term”). This Agreement may be renewed for up to two (2) additional two-year (2) terms by mutual written consent of the parties. City’s City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of City.

2. Advertising and Promotion. Subject to the terms and conditions hereof, City will receive the following advertising and promotion elements as set forth below and shown in Exhibit A:

Static Signage

Location	Description; Run Dates	Dimensions	Value	Costs
7(A)	Description: Static Spectacular – Illuminated. Advertising will be published on a continuous 24-hour basis during the run dates and is illuminated from dusk until dawn. Run Dates: July 1, 2022 – June 30, 2024	18’x84’	\$156,000.00	Legends will cover the cost of one (1) standard vinyl changeout at the rate of \$6,000.00 during the two (2) year term. Any other changeouts plus custom elements (i.e. embellishments) will be at City expense.

3. Payments.

(A) Amount and Billing. For the advertising and promotional rights described in this Agreement, City will pay Legends \$156,000.00, net of taxes and charges as set forth in Section 3(B) below. Payment will be made in two (2) equal installments of \$78,000.00 each on July 1, 2022 and July 1, 2023. Legends will invoice City thirty (30) days prior to all payment dates. At Legends’ option, any invoices remaining unpaid ten (10) days after the invoice date

will accrue interest at the rate of one and one-half percent (1.5%) per month. The payment obligations set forth in this Section 3 shall survive the termination or expiration of this Agreement.

(B) Taxes. Any and all taxes and other charges levied, assessed or otherwise due (other than income taxes of the Legends) in connection with the advertising, promotions, signage or other arrangements described herein by any federal, state, or local governmental authority will be paid by City. Any such taxes will be charged to City annually or on the invoices to be submitted to City.

4. Entire Agreement. This Agreement, including its Recitals, the Terms & Conditions, the City Specific Terms and Conditions, and any Exhibits attached hereto (all of which are incorporated herein by this reference), contains the entire agreement and understanding of the parties as to the matters contained in this Agreement, and it may not be amended except by a writing signed by all parties. There are no oral or written representations, agreements, understandings or circumstances which modify any of the provisions hereof. In the event of a conflict between this Agreement and any other agreement between the parties including, without limitation, City's issued insertion orders, invoices, affidavits, and/or any other documents arising from the advertising elements described herein, this Agreement shall control.

5. Duplicates; Counterparts. This Agreement shall be executed in duplicate, each of which may be executed in any number of counterparts, all of which, when taken together as a whole, shall constitute a single, binding instrument. Electronic copies of a fully executed Agreement shall be deemed an original.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement, or has caused this Agreement to be executed on its behalf by a representative duly authorized, all as of the Effective Date.

City:

City of Flagstaff
an Arizona municipal corporation,
dba Flagstaff Convention and Visitors Bureau

By: _____
Paul Deasy, Mayor

Attest by:

Stacy Saltzburg, City Clerk

Approved as to form by:

City Attorney

Legends:

Jefferson Street Signage District, LLC,
an Arizona limited liability company,
dba **Legends Entertainment District**

By: _____
Blake Edwards
General Manager

LEGENDS ENTERTAINMENT DISTRICT MARKETING AGREEMENT

TERMS & CONDITIONS

1. General Advertising and Promotion Provisions.

(A) Legends Approval, Advertising Guidelines and Approval Procedure. The content of all advertising and promotions provided for herein is subject to Legends' approval. Legends reserves the right to refuse to display all or a portion of any advertising if Legends reasonably determines that the advertising fails to conform substantially with standards of quality advertising, conflicts with other advertising or agreements of Legends, is in bad taste, or is otherwise reasonably objectionable. City must submit all proposed advertising that it intends to use at least ten (10) calendar days before the intended use. Notwithstanding the foregoing, the final design and placement of all signage contemplated herein will be subject to normal governmental approval, including but not limited to, approval by the City of Phoenix.

(B) Cost of Signage; Upgrades/Changes of Signage. If applicable, Section 2 of the Agreement sets forth the party responsible for the cost of production/installation and modification of the signage. All signage work shall be performed by Legends. If City is responsible for the cost of the work, Legends will bill City at the cost set forth in Section 2 of the Agreement. Legends reserves the right to replace, upgrade or alter any signage contained in this Agreement; however, regardless of any upgrade or change, City will continue to receive the equivalent advertising exposure provided for in this Agreement.

2. Indemnification.

(A) City. City at its own expense will defend, indemnify and hold Legends (and its owners, partners, members, managers, officials, officers, employees and agents) harmless from all third-party claims, demands, suits, actions, proceedings, losses, fines, expenses, costs, and damages of every kind and description, including reasonable attorneys' fees and litigation expenses (collectively, "Claims"), which may be brought or made against or incurred by Legends, arising out of: (i) the use of any trademark, copyright or other intellectual property right arising out of, or connected with the signage, advertising or promotional materials; or (ii) the accuracy, character, form and subject matter of any signage, advertising or promotional materials, provided such signage,

advertising or promotional materials is in a form exactly as provided in writing by City.

(B) Mutual. The parties will each indemnify, defend and hold harmless each other (and their respective partners, members, managers, officials, officers, employees and agents) from all Claims made against or suffered by the other party because of or based upon the indemnifying party's (or its officers', managers', members', employees', agents', independent contractors' or promoters') misrepresentations, negligence, intentional act or omission, unlawful act or omission, or failure to perform any obligation under this Agreement.

(C) Party Obligations. Each party will give the other party prompt written notice of any claim or suit coming within the scope of these indemnities. Upon the written request of an indemnitee, the indemnitor will assume the defense of any claim, demand or action against the indemnitee and will permit the indemnitee, at the indemnitee's expense, to participate in the defense of the claim. Settlement by the indemnitee without the indemnitor's prior written consent, which will not be unreasonably withheld, will release the indemnitor from the indemnity as to the claim, demand or action so settled. Termination of this Agreement will not affect the continuing obligations of the parties as indemnitors under this Agreement.

3. Governing Law and Arbitration. This Agreement shall be governed and controlled by the substantive laws of the State of Arizona. Any and all disputes (except for a default by City for failure to timely make payments, which may, at Legends' option, be resolved by a court of competent jurisdiction) arising under this Agreement (including issues regarding the interpretation of any provision of this Agreement and determinations of whether any issue arising from or related to this Agreement is subject to arbitration) shall be resolved by arbitration in accordance with the Commercial Rules of the American Arbitration Association. Arbitration proceedings shall occur before a single arbitrator and take place in Phoenix, Arizona. The outcome of such arbitration proceedings shall be binding on the parties. If a party wishes to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction or other interim equitable relief concerning the

dispute, including, without limitation, provisional remedies, special action relief or stay proceedings in connection with special action relief, either before commencing or at any point in the arbitration proceedings concerning such dispute, such party may initiate the appropriate litigation to obtain such relief, which may be subject to and controlled by the ultimate decision in the arbitration proceedings. The prevailing party in any court or arbitration proceeding shall be entitled to recovery of reasonable attorney's fees and costs.

4. Default and Remedies.

(A) Default. If: (i) any party fails to pay any fees or other sums when due under this Agreement; (ii) any party fails to comply with or perform any of the provisions of this Agreement; (iii) City becomes insolvent; or (iv) a petition is filed by or against City under any foreign, federal or state statute (including, without limitation, Title 11 of the United States Code) for the benefit of creditors such as debt adjustment, liquidation, winding up, dissolution, reorganization or bankruptcy, or a custodian (as defined in 11 U.S.C. § 101), receiver or liquidator takes charge of any of City's property, whether by judicial appointment, agreement or operation of law; then such party will be in default of this Agreement. However, if the non-defaulting party is not precluded by law from issuing notice of the default, the defaulting party will have ten (10) days after written notice is given within which to cure the default.

(B) Legends' Remedies. If under Section 4(A) of these Terms & Conditions, a notice of default is not required or if notice is given and a default by City is not cured within the time provided, then (i) Legends will be excused from further performance under this Agreement; (ii) Legends may treat this Agreement as having been terminated as of the time of default; (iii) without further notice and with or without terminating this Agreement, Legends may remarket City's signage and other rights or otherwise mitigate damages; (iv) Legends may, without further notice or demand, declare any earned portion of the entire amount set forth in this Agreement that is unpaid (irrespective of the payment due date) immediately due and payable in either trade value or cash (at Legends' election); and (v) Legends may recover from City all losses and damages it suffers by reason of a default, including any costs of finding a substitute advertiser. In the alternative, at its option, Legends may continue this Agreement and recover all damages resulting from the default. City acknowledges that Legends has other available advertising and promotional inventory that Legends sells to other advertisers. City understands that, in

the event of a default by City, Legends may continue to sell other available inventory, and shall have no obligation to sell City's inventory first.

(C) City Remedies. If, under Section 4(A) of these Terms & Conditions, a notice of default is not required or if notice is given and a Legends default is not cured within the time provided, City may: (i) treat the Agreement as having been terminated as of the time of default and may be excused from further performance under this Agreement; or (ii) continue this Agreement and recover all damages resulting from the default. In no event shall Legends be liable or responsible for any lost income, profits or consequential damages of City or any person or entity.

5. Miscellaneous.

(A) Force Majeure. In the event Legends is unable to perform its obligations under this Agreement because of fire, the elements, mob, riot, national or local emergency, strikes, lockouts, failure of negotiations between broadcast parties, calamity, epidemic, war, terrorism, or for any other reason outside the control of Legends, at its option Legends may provide additional advertising, sponsorship, or promotional rights, provide City with a refund or rebate, or extend the Term to compensate City for lost rights. In no event will any such event constitute an event of default by Legends which would permit City to terminate this Agreement pursuant to Section 4(A) of these Terms & Conditions or otherwise.

(B) Independent Contractors. The parties are independent contractors and are solely responsible for the conduct of their respective employees and agents in connection with the performance of their obligations under this Agreement.

(C) Assignment. City will not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Legends. This Agreement inures to the benefit of, and is binding upon, the parties and their respective permitted successors and assigns. Legends may make a collateral assignment of its rights under this Agreement to a financial institution ("Lender"), and City consents to the grant by Legends to Lender of a first priority security interest in the interest of Legends under this Agreement. Upon foreclosure by Lender on Legends' interest in this Agreement, City consents to the transfer of Legends' right, title and interest in this Agreement (and related rights and interest) to Lender (or other party designated by Lender).

(D) Waiver. The delay or failure of a party to assert or exercise any right, remedy or privilege under this Agreement or to insist on strict and prompt performance of the covenants and agreements herein, does not constitute a waiver of any right, remedy, or failure to perform, nor will it be construed as a waiver or relinquishment of the party's right to later enforce the same according to its rights under this Agreement if there is a continuous or later default. No waiver is effective unless in writing, and then only in the specific instance for which it was given.

(E) Notice. Any notices, consents or approval required or permitted under this Agreement will be properly given if in writing, whether personally delivered, or forwarded by mail or overnight courier, postage prepaid, addressed to the following addresses (or such other addresses as may from time to time be designated in writing by each party):

To Legends:

Jefferson Street Signage District, LLC
Attn: Jason Rowley
201 East Jefferson Street
Phoenix, AZ 85004

and:

Jefferson Street Signage District, LLC
Attn: Blake Edwards
401 East Jefferson Street
Phoenix, AZ 85004

With a copy to:

Jefferson Street Signage District, LLC
Attn: Cullen Maxey
401 East Jefferson Street
Phoenix, AZ 85004

and:

Jefferson Street Signage District, LLC
Attn: Nona M. Lee
401 East Jefferson Street
Phoenix, AZ 85004

To City:

City of Flagstaff Convention and
Visitors Bureau
Attn: Trace Ward
211 West Aspen Ave.
Flagstaff, AZ 86001

(F) Time. Time is of the essence in this Agreement.

(G) Reservation of Rights. Legends reserves all rights hereunder which are not expressly granted to City.

(H) Authority. Each individual executing this Agreement on behalf of, or as representative for, a person, partnership, corporation or other entity represents that he or she is duly authorized to execute and deliver this Agreement on behalf of such person or entity and that this Agreement is binding upon such person or entity in accordance with its terms.

(I) Interpretation. The parties acknowledge and confirm that each of their respective attorneys has participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor any party against another.

(J) Severability. If any provision of this Agreement is determined to be illegal or unenforceable by an arbitrator, court or government agency of competent jurisdiction, this Agreement shall remain valid as though such provision had not been contained herein.

(K) League Governance. City acknowledges and agrees that this Agreement is subject to the rules, policies, and mandates of Major League Baseball and/or the National Basketball Association (“League Rules”). In the event the League Rules materially affect this Agreement, the parties shall negotiate in good faith for an appropriate remedy for City, consistent the remedies set forth in Section 5(A) of these Terms & Conditions.

END OF TERMS & CONDITIONS

CITY SPECIFIC TERMS AND CONDITIONS

1. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S § 38-511):** City may cancel the Agreement within three (3) years after its execution, without penalty or further liability to Legends.
2. **CREDIT:** Provided that City is not otherwise in default or breach of the Agreement, City will receive a credit if Legends is unable to publish the advertising.
3. **TAXES:** City is not responsible for payment of taxes unless separately stated in the invoice.
4. **CORRECTIONS:** Legends is responsible for notifying City in writing of any omissions, problems or defects in the advertising/publishing/broadcasting/media services provided as soon as Legends becomes aware of any such issue, and what Legends actions will be taken to remedy the situation.

END OF CITY SPECIFIC TERMS AND CONDITIONS

Exhibit A

(Location of Advertising and Promotion Elements)

Legends ENTERTAINMENT DISTRICT SIGNAGE SITE MAP



SITE MAP KEY

- STATIC SIGNAGE
- WINDOW GRAPHICS
- DIGITAL SIGNAGE
- CUSTOM SIGNAGE