

CITY OF MANKATO AND VISIT MANKATO OPERATING AGREEMENT

This Agreement made this ____ day of December, 2024, effective as set forth above, by and between City of Mankato, a Minnesota municipal corporation, hereafter referred to as the “City”, and Visit Mankato, LLC, a Minnesota corporation, hereafter referred to as “Visit Mankato”, collectively referred to a “Parties”.

RECITALS

- A. Minnesota Statutes, Section 469.190 and the Lodging Tax Section of the City’s Code, authorizes the imposition of a tax of three percent on the gross receipts from the furnishing of lodging within the city to fund a local convention or tourism bureau for the purpose of marketing and promoting the city or town as a tourist or convention center, hereinafter referred to as “Lodging Tax”.
- B. City has the right to enter into a separate agreement with an agency to provide for the purposes of marketing and promoting City as a tourist or convention center using lodging tax proceeds.
- C. Visit Mankato is engaged in and is willing to provide marketing and promotion services for the City of Mankato. As part of this work, Visit Mankato will include promotions of the City’s Convention Center, known as the Mayo Clinic Health System Event Center.
- D. City finds marketing and promotion services provided in conjunction with Visit Mankato to be in the best interests of the city.
- E. City desires to engage Visit Mankato to provide the services described in this Agreement and Visit Mankato is willing to provide such services on the terms and conditions set forth herein.

AGREEMENT

- 1. **Services to be Provided.** Visit Mankato agrees to provide City with marketing and promotion services as set forth in this Agreement including any obligations within this Agreement or supplemental letter agreements entered into between City and Visit Mankato, as well as any other services allowed by state law (“Scope of Services” or “Services”). All Services and obligations shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professionals currently providing similar marketing and promotion services.
- 2. **Term.** The term of this Agreement shall be for a five (5) year term (the "Term"), commencing on January 1, 2025 (the "Commencement Date") and may be renewed for additional terms through mutual agreement by the Parties after review by City and Visit Mankato before the end of the term on December 31, 2029.

3. **Distribution of Proceeds.** City shall distribute 95% of the gross proceeds of the tax imposed in the following manner:
 - 3.1 Eighty percent (80%) of ninety-five percent (95%) of the gross proceeds collected shall be distributed to Visit Mankato for the purposes of marketing and promoting the city or town as a tourist or convention center; and
 - 3.2 Twenty percent (20%) of ninety-five percent (95%) of the gross proceeds collected shall be distributed to City to go into a Lodging Tax fund for the purposes of marketing and promotion of the City's Convention Center, known as the Mayo Clinic Health System Event Center.
4. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
 - 4.1 The parties, by mutual written agreement, may terminate this Agreement at any time.
 - 4.2 Visit Mankato may terminate this Agreement in the event of a breach by City of any material term, covenant, or agreement of City provided in this Agreement upon providing one hundred eighty (180) days written notice to City, unless a breach is cured by City within said one hundred eighty (180) days.
 - 4.3 City may terminate this Agreement in the event of a breach by Visit Mankato of any material term, covenant, or agreement of Visit Mankato provided in this Agreement upon providing one hundred eighty (180) days written notice to Visit Mankato, unless a breach is cured by Visit Mankato within said one hundred eighty (180) days.
 - 4.4 The Agreement shall terminate immediately upon the Visit Mankato's failure to have in force any insurance required by this Agreement, unless the matter is cured by Visit Mankato within thirty (30) days.

Except as provided in paragraph 5 below, in the event of a termination, City shall pay Visit Mankato for Services performed to the date of termination and for all equipment costs or other expenses incurred, including contracts with outside agencies, prior to the date of termination.

5. **Remedies.**
 - 5.1 In the event of a termination of this Agreement by City because of a breach by Visit Mankato, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof.

- 5.2 The foregoing remedies provided to City for breach of this Agreement by Visit Mankato shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Visit Mankato's breach.
6. **Records/Inspection.** This Agreement is subject to the requirements of Minnesota Statutes, Section 16C.05, subd. 5. Visit Mankato agrees that City or any authorized representatives may have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, or other materials during normal business hours and as often as deemed necessary. Visit Mankato agrees to maintain these materials, records, and documents for six years from the date of the termination of this Agreement.
7. **Visit Mankato Obligations.** Visit Mankato shall ensure that the following obligations are performed:
- 7.1 Prepare an annual budget for approval by its Board of Governors.
 - 7.2 Prepare an annual report, including an overview of the annual budget, to be presented to the City Council;
 - 7.3 Prepare monthly reports for approval by its Board of Governors;
 - 7.4 Implement and assist in providing direction and oversight of the Lodging Tax income and expense;
 - 7.5 Establish and implement annual program goals which shall be provided to City Council for informational purposes annually;
 - 7.6 Prepare a tourism marketing strategy that utilizes a multi-faceted approach to attract visitors to the community; and
 - 7.7 Any other matters or obligations as determined by its Board of Governors.
8. **Board of Governors.** Visit Mankato shall maintain a Board of Governors in accordance with an adopted set of Bylaws. The membership of the Board of Governors shall include but not be limited to, one seat for a voting member on the Board of Governors for the Mayor, City Manager, or another designee of the City of Mankato and one seat for a voting member for a staff leader at the Mayo Clinic Health System Event Center.
9. **Annual Budget and Work Plan.** Visit Mankato shall submit an annual budget for review and approval annually to its Board of Governors. Visit Mankato shall provide a presentation to the City Council that includes a progress report on the work plan and budget for the current year as well as the work plan and budget for the upcoming year.
9. **Monthly Financials.** Visit Mankato shall provide its Board of Governors with a monthly financial statement reflecting the prior month. The financial statement shall show (a) list of bills/expense report, (b) budget to actual statement, and (c) current fund balance.

10. **Indemnification.**

10.1 Each Party agrees that it will be responsible for the acts or omissions of its officials, agents, and employees, and the results thereof, in carrying out the terms of this Agreement, to the extent authorized by law and shall not be responsible for the acts/omissions of the other Party and the results thereof.

10.2 Each Party agrees to defend, hold harmless, and indemnify the other Party, its officials, agents, and employees, from any liability, loss, or damages the other Party may suffer or incur as the result of demands, claims, judgments, or cost arising out of or caused by the indemnifying Party's negligence in the performance of its respective obligations under this Agreement. This provision shall not be construed nor operate as a waiver of any applicable limitation of liability, defenses, immunities, or exceptions by statute or common law.

11. **Insurance and Bonds.** Visit Mankato will maintain at Visit Mankato's sole expense, insurance coverage for itself, including the following: Workers Compensation within state limits General Liability, and Directors and Officers Liability in an amount of not less than \$1 million per occurrence (except only statutory limits for workers compensation coverage) and at least \$1 million aggregate coverage and an umbrella policy with limits of at least \$1 million, and will provide information as to specific limits upon receipt of signed Agreement. Such insurance must cover all losses related to this Agreement. The Visit Mankato shall provide City with a current certificate(s) of liability insurance for all insurance coverage referenced above. Such certificate(s) of General Liability insurance shall list City as an additional insured and all certificate(s) of liability insurance shall contain a statement that such policies of insurance shall not be canceled or amended unless sixty (60) days written notice is provided to City (ten (10) days written notice in the event of non-payment of premium). Acceptance of a certificate of insurance that does not comply with these requirements does not operate as a waiver of the Visit Mankato's or any other party's obligations hereunder. In addition, the Visit Mankato shall cause all vendors and participants to maintain insurance coverage for all vendors and participants at tourism-related events conducted pursuant to this Agreement.

In addition to the insurance requirements set forth above, the Visit Mankato shall obtain a fidelity bond in the minimum amount of \$100,000 covering the person or persons on a position or name-scheduled basis that handles any money pursuant to this Agreement. The amount of such bond shall be reviewed annually and modified to be consistent with the lodging tax dollars paid to the Visit Mankato pursuant to this Agreement.

12. **Subcontracting; Assignment.** Visit Mankato shall not subcontract or assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement without the prior written consent of City. Any assignment in violation of this provision is null and void. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

13. **Independent Contractor.** Visit Mankato is not an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided herein. All services provided by the Visit Mankato pursuant to this Agreement shall be provided by the Visit Mankato as an independent contractor and not as an employee of City for any purpose, including but not limited to income tax withholding, workers compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
14. **Compliance with Laws.** Visit Mankato shall exercise due professional care to comply, in all material respects, with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date. Visit Mankato agrees to provide the applicable services detailed in this agreement or any supplemental letter agreement.
15. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:
- Visit Mankato: Executive Director
 Visit Mankato
 3 Civic Center Plaza, Suite 100
 Mankato, MN 56001
- City: City Manager
 City of Mankato
 10 Civic Center Plaza
 Mankato, MN 56001
16. **Attorney Fees.** In the event of any action to enforce or interpret this Agreement, each party shall be responsible for their own attorney's fees.
17. **Entire Agreement; Amendments.** This Agreement and any amendments signed by the parties shall constitute the entire agreement between City and Visit Mankato and supersedes any other written or oral agreements between City and Visit Mankato. This Agreement can only be modified or amended in writing signed by City and Visit Mankato.
18. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
19. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

20. **Conflict of Interest.** In the execution of services outlined in this Agreement, the Visit Mankato shall equally promote and market all tourism sectors of City; preferential treatment for certain tourism sectors or subsets is prohibited. Visit Mankato shall use reasonable care to avoid conflicts of interest and appearances of impropriety in providing its marketing and promotion services for City. In the event of a conflict of interest, Visit Mankato shall advise City and either secure a waiver of the conflict or advise City that it will be unable to provide requested marketing and promotion services. It is the intent of Visit Mankato to refrain from handling marketing and promotion matters for any other person or entity that may pose a conflict of interest.
21. **Agreement Not Exclusive.** City retains the right to hire other marketing and promotion professionals for other matters, that are not related to the Services, in City's sole discretion.
22. **Data Practices Act Compliance.** Any and all data provided to Visit Mankato, received from Visit Mankato, created, collected, received, stored, used, maintained, or disseminated by Visit Mankato pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and specifically Section 13.495. This paragraph does not create a duty on the part of Visit Mankato to provide access to public data to the public if the public data are available from City, except as required by the terms of this Agreement.
23. **No Discrimination.** Visit Mankato agrees not to discriminate in providing products and services under this Agreement based on race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement.
24. **Survivability.** All covenants, indemnities, guarantees, releases, representations, and warranties of either party or the parties and any undischarged obligations of the parties arising prior to the expiration or termination of this Agreement, shall survive such expiration or termination.
25. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement for Visit Mankato services in duplicate on the respective dates indicated below.

CITY OF CITY

By: _____
Najwa Massad
Its: Mayor

By: _____
Susan MH Arntz
Its: City Manager

VISIT MANKATO, LLC

By: _____
Alec Pfeffer
Its: Board Chair

By: _____
Ashlee White
Its: Director