

FUNDING AGREEMENT
Go Lake Havasu
Destination Marketing



This Agreement, made and entered into 5/17, 2023, by and between Lake Havasu City, a municipal corporation of the State of Arizona ("City"), and Lake Havasu Tourism Bureau, Inc., dba Go Lake Havasu, an Arizona corporation ("GLH"), referenced individually as "Party" or collectively the "Parties." The Parties agree as follows:

I. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2023, through June 30, 2029.

II. PAYMENT

- A. City agrees to pay to GLH monthly installments of \$133,333.33 for the term of this Agreement if GLH submitted all of the quarterly reports as described in Section IV. Each payment will be made by the 15th of the month except for April, July, October, and January when payment is made within 14 days of receiving the quarterly report.
- B. All costs incurred by the City for the collection and distribution of funds related to this Agreement shall be deducted from the payments submitted to GLH. GLH receives a summary of costs deducted as part of the monthly funding calculation notice.

III. CITY OBJECTIVES

- A. City requires the following for successful fulfill of this Agreement:
 - 1. Efficient and effective promotional activities to attract tourists and visitors to Lake Havasu City.
 - 2. Operation of a visitor center to provide information about Lake Havasu City.
 - 3. Coordination of hotel and motel efforts in Lake Havasu City to maximize occupancy rates.
 - 4. Coordination and communication with tourism related agencies and regional partners to promote tourism and Lake Havasu City.

IV. GLH DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

- A. GLH agrees to the following:
 - 1. Promote Lake Havasu City — our community, our vision, our goals.
 - 2. Serve as the primary contact for tourism and promotion of Lake Havasu City (referral point).

3. Designate, establish, and operate a visitor or tourist information center furnishing tourist information and literature about the City.
4. Provide the City Manager a written quarterly report, within ten business days of the end of each quarter, to include, at a minimum, during the previous quarter, all contacts made with individuals and entities who considered Lake Havasu City as a special event location; how the hotels and motels were positively impacted by GLH efforts; copies of promotional materials distributed; accounting of City funds expended; grant funds received from other entities; information regarding the operation of the visitor center; and highlights of GLH activities.
5. Collaborate with the City Manager on policy development related to tourism, including promotional activities, special events, and activities that impact the City.
6. Update and maintain the materials and information posted on the GLH website, so a user can easily access timely information about Lake Havasu City, including events. Agendas and minutes of the public meetings of the GLH Board shall be posted on the GLH website in a timely manner.
7. Provide a seat on the GLH Board, with voting privileges, for the City Manager or designee.
8. Provide an ex-officio seat on the GLH Board for a member of the City Council, as determined by the City.
9. Provide the City Manager with studies and reports commissioned by GLH.
10. Seek grant funds to promote tourism and Lake Havasu City.
11. Perform projects assigned by the City Council or the City Manager that fall under the expertise of the GLH. Requests are submitted to GLH in writing.
12. Present, at a minimum, annually to the City Council a summary of GLH's accomplishments. GLH agrees to contact the City to schedule a time to present during the first quarter of each calendar year.

V. FISCAL RESPONSIBILITY

- A. GLH is responsible for the efficient and effective administration of funding received under this Agreement through the application of sound practices to assure proper and efficient administration of the funds awarded.
- B. GLH shall develop an annual budget and provide a copy to the City Manager within 30 calendar days of its adoption by the GLH Board.
- C. GLH assumes responsibility for administering funds received under this Agreement in a manner consistent with underlying agreements, program objectives, and the terms and conditions of this Agreement.
- D. GLH agrees to segregate the accounting for funds received under this Agreement from other income sources, to spend funds received under this Agreement only in accordance with this Agreement. Funds received under this

Agreement must be expended for tourism activities only as outlined in Section IV.

- E. GLH agrees to acknowledge City support in all written or online publications.
- F. GLH agrees to prepare, retain, and permit City to inspect all records, as City deems necessary, for the purpose of carrying out the provisions of this Agreement. GLH agrees further that the City may carry out monitoring and evaluation activities, as determined by the City, and effectively ensures the cooperation of the GLH, employees, and board members in such efforts.
- G. Upon request by the City, GLH agrees to furnish City a copy of the most recent auditor's report and management letters.
- H. Upon dissolution of the GLH, any remaining transient rental tax funds and restaurant and bar tax funds and assets purchased with transient rental tax funds and restaurant and bar tax funds shall revert to the City.

VI. CONTRACTOR'S STATUS

- A. It is understood and agreed by the Parties that GLH is and shall remain an independent contractor under this Agreement and that GLH shall be liable to City for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
- B. GLH must comply with Lake Havasu City Code Chapter 3.30, Employment of Unauthorized Aliens.
- C. GLH must comply with ARIZ. REV. STAT. §§ 1-501 and 1-502 with regard to demonstrating lawful legal presence in the United States when applying to receive a local public benefit.

VII. INSURANCE

- A. GLH shall procure and maintain, until all obligations under this Agreement are satisfied, public liability insurance which may arise from or in connection with the performance of this Agreement. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenant contained in this Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect GLH from liabilities that might arise out of the performance of this Agreement, and GLH is free to purchase additional insurance.
 - 1. Minimum Scope and Limits of Insurance: GLH shall provide coverage with limits of liability not less than those stated below.
Public liability Insurance. \$1,000,000.00
Officers and Directors Insurance
 - a) The policy shall be endorsed to include the following additional insured language: "Lake Havasu City, Arizona, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of GLH."

- b) Policy shall contain a waiver of subrogation against the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees for losses arising from the service provided by or on behalf of GLH.
- B. GLH's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the GLH shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- C. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits without ten (10) business days' written notice from the insurer to the City. Such notice shall be mailed directly to City [Lake Havasu City, Attention City Attorney / Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, AZ 86403] and shall be sent by certified mail, return receipt requested.
- D. Insurance coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating.
- E. GLH shall furnish to City certificates of insurance as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates shall be mailed directly to City [Lake Havasu City, Attention City Attorney / Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, AZ 86403]. City, agreement date, and agreement purpose are to be noted on the certificate of insurance. If requested, complete copies of insurance policies shall be provided to City. All certificates and endorsements are to be received and approved by the City within ten (10) business days of the effective date of this Agreement. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the Agreement and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

VIII. INDEMNIFICATION

- A. Nothing in this Agreement shall be construed to give any person other than City and GLH any legal or equitable right, remedy, or claim under this Agreement; but it shall be held to be for the sole and exclusive benefit of City and GLH.
- B. To the fullest extent permitted by law, GLH agrees to indemnify, defend, save, and hold harmless the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees ("Indemnitee") for, from, and against any and all claims, actions, liabilities, damages, costs, losses, or expenses (including, but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation) to which any Indemnitee may become subject, under any theory of liability ("Claims") to the extent that Claims are caused by GLH, its

officers, employees, agents, volunteers, or any tier of subcontractor in connection with carrying out the provisions of this Agreement. This Indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation law or arising out of the failure of GLH to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. GLH agrees it will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. The amount and type of insurance coverage requirements of this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.

IX. NON-APPROPRIATION OF FUNDS

The Parties recognize that the funds to be distributed pursuant to this Agreement are tax funds. In the event that the projected income is not attained, there is a possibility that some or all of the funds set forth herein will not be available. In the event income falls short of the projected income, City may, in its sole discretion, reduce or delete some of the funding set forth in this Agreement. City will give at least 120 calendar days' notice if the amount of the funding must be reduced. Should City be unable to provide some or all of the funding set forth in this Agreement, following notice of same to GLH by City, the Parties agree this Agreement will automatically be amended or cancelled to reflect said change without further action and without penalty to either Party.

X. OPEN MEETING REQUIREMENTS

All regular GLH Board meetings shall be open for the public to attend and listen, if applicable.

XI. CONFLICT OF INTEREST

- A. GLH stipulates that its officers and employees do not now have a conflict of interest and further agrees for itself, its officers, and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement.
- B. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

XII. DISCRIMINATION

GLH shall not discriminate on the grounds of race, color, gender, religion, age, disability status, or national origin with respect to the programs and services it maintains and provides. Violation of this section will result in automatic termination of this Agreement and GLH must promptly repay to City all funds provided and distributed pursuant to this Agreement.

XIII. TERMINATION

- A. This Agreement may be modified or terminated by City upon 120 days' written notice.
- B. Except as provided in Section X (Non-Appropriation of Funds) of this

Agreement, in the event a breach of the Agreement by GLH or a dispute between the City and GLH arises as to the terms or services to be provided under this Agreement, the City shall give written notice to GLH of the breach or dispute. If GLH is unable to cure the breach or the Parties are unable to resolve the dispute within 180 calendar days of the written notice, the City shall terminate this Agreement.

XIV. NOTICE

Any notice provided herein shall be given to City by delivery of the same personally to the City to the address below, or by causing the same to be mailed by certified mail addressed to City Manager, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403, with copy to City Attorney. Any notice directed to GLH shall be mailed by certified mail to the GLH at the address given below in this instrument, or at such other address as may be furnished to City in writing.

XV. ASSIGNMENT

GLH may not assign its rights in this Agreement without the prior, written consent of City; and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto.

XVI. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

XVII. GOVERNING LAW

The laws of the State of Arizona shall be applied in interpreting and construing this Agreement.

XVIII. WAIVER OF PERFORMANCE

No failure by City or GLH to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by GLH or acceptance by City during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Agreement, which shall constitute in full force and effect, nor the respective rights of GLH or City with respect to any other then existing or subsequent breach.

XIX. NO PARTNERSHIP; NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and GLH. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party.

XX. SECTION HEADINGS

The section headings contained in this Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, plural as the contract may require.

XXI. ENTIRE AGREEMENT

This writing represents the entire Agreement of the Parties hereto and merges and supersedes any and all prior understandings, whether oral or written, touching on the subject matter hereto and any amendment or modification hereof shall be effective only if in writing signed by both Parties.

XXII. MULTIPLE ORIGINALS

This document may be signed in duplicate originals for the purpose of providing each Party with a completely executed original.

XXIII. FORCED LABOR OF ETHNIC UYGHURS CERTIFICATION

GLH certifies that it does not currently, and agrees for the duration of the Agreement that it will not, use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If GLH becomes aware it is not in compliance with this certification, it shall notify the City within five business days after becoming aware. This Agreement will terminate upon failure to remedy the noncompliance within 180 days of the notification. (A.R.S. § 35-394)

The Parties execute this Agreement the day and date first above written.

LAKE HAVASU CITY



Jess Knudson, City Manager

LAKE HAVASU TOURISM BUREAU, INC.



Terence Concannon, President and CEO
314 London Bridge Road
Lake Havasu City, AZ 86403

APPROVED AS TO FORM:
Lake Havasu City Attorney's Office



Kelly Garry, City Attorney