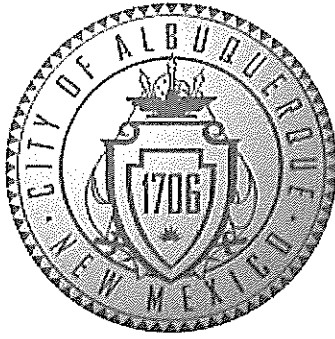


EC-23-346



**CITY OF ALBUQUERQUE**  
Albuquerque, New Mexico  
Office of the Mayor

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

July 31, 2023

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT: APPROVING A CONTRACT WITH VISIT ALBUQUERQUE TO PROVIDE DESTINATION MARKETING AND GROUP SALES AND SERVICE**

Visit Albuquerque has been the City's long-time partner for destination marketing and group sales services. In December 2023, the City Council passed Ordinance O-22-48, which allows the City to contract with an accredited Destination Marketing Organization (DMO) to provide such services without the need for competitive bid, due to the very unique nature of the services provided.

This contract will allow Visit Albuquerque to recruit tourists, conventions, trade shows and corporate meetings to the Albuquerque Convention Center, Albuquerque hotels, and other City venues; as well as provide destination-marketing services. The funding sources are City's Lodger's Tax and Hospitality Fee Revenues, for a total of \$7,892,000 for FY/24.

This project will benefit the community by increasing tourism and convention activity, and related revenues for the City and its lodgers.

Upon final contract negotiations with the vendor, the term of the contract has been increased to 7-years with a 2-year option. This is aligned with industry best practices and is in the best interest of the City of Albuquerque.

Title: APPROVING A CONTRACT WITH VISIT ALBUQUERQUE TO PROVIDE DESTINATION MARKETING AND GROUP SALES AND SERVICE

Approved:



Lawrence Rael      Date  
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:  
*Lauren Keefe*      8/2/2023 | 4:45 PM MDT  
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\_\_\_\_\_  
Date  
City Attorney

Recommended:

\_\_\_\_\_  
DocuSigned by:  
Director  
*Max Gruner*      8/1/2023 | 7:52 PM MDT  
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## **Cover Analysis**

### **1. What is it?**

An agreement with Visit Albuquerque to provide Destination Marketing and Group Sales and Service to recruit tourists, conventions, trade shows, and corporate meetings to the Albuquerque Convention Center, Albuquerque hotels, and other Albuquerque venues.

### **2. What will this piece of legislation do?**

The agreement will allow Visit Albuquerque to continue provide Destination Marketing and Group Sales and Service for the City.

### **3. Why is this project needed?**

The current contract with Visit Albuquerque expires on June 30, 2023. This agreement will allow for continuation of the destination marketing services. On December 5, 2022, the City Council passed Ordinance O-22-48, which allows an exemption from the competitive bid requirements of the City Purchasing Ordinance for accredited Destination Marketing Organizations (DMOs).

### **4. How much will it cost and what is the funding source?**

The total amount received by Visit Albuquerque under its current agreement for FY/23 was \$7,554,000 of which, \$6,295,000 was generated by Lodger's Taxes, and \$1,259,000 was generated by Hospitality Fees.

The total amount allocated for FY/24 is \$7,892,000 of which, \$6,576,000 is from Lodger's Taxes and \$1,316,000 is allocated from Hospitality Fees.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

Yes, we expect increases in Lodger's Tax and Hospitality Fees for the additional activities, but levels are yet unknown.

### **6. What will happen if the project is not approved?**

The City will not have Destination and tourism marketing partner in place.

### **7. Is this service already provided by another entity?**

No.

**FISCAL IMPACT ANALYSIS**

TITLE: APPROVING A CONTRACT FOR THE ALBUQUERQUE HISPANO CHAMBER OF R: O:  
 COMMERCE TO RECRUIT HISPANIC AND NATIVE AMERICAN TOURIST,  
 CONVENTIONS, TRADE SHOWS, AND CORPORATE MEETINGS TO THE  
 ALBUQUERQUE CONVENTION CENTER AND ALBUQUERQUE HOTELS  
 FUND: 220/221  
 DEPT: EDD

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2023	Fiscal Years 2024	2025	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
<b>Total Expenses</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<input type="checkbox"/> Estimated revenues not affected				
<input checked="" type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
<b>Total Revenue</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

These estimates do not include any adjustment for inflation.  
 \* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** Amount of the contract will be covered by estimated revenues in Lodgers Tax (220) or Hospitality Tax (221) Funds for FY/24, already appropriated for this purpose.

**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

PREPARED BY:  
 Stephanie Yara 5/1/2023

APPROVED:  
 Max Gruner 5/1/2023

*Stephanie Yara*  
 DocuSigned by:  
 FISCAL ANALYST  
 REVIEWED BY:  
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DIRECTOR  
 (date)  
 AM MDT

*Max Gruner*  
 DocuSigned by:  
 (date)  
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EXECUTIVE BUDGET ANALYST

BUDGET OFFICER (date)

CITY ECONOMIST

*Jennifer Brokaw*  
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8/2/2023 | 7:22 AM

*Lawrence L. Davis*  
 DocuSigned by:  
 8/2/2023 | 2:50 PM  
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*Christine Boerner*  
 DocuSigned by:  
 8/2/2023  
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## AGREEMENT

THIS AGREEMENT is made and entered into as of the date of the last signature below, by and between the City of Albuquerque, New Mexico, a municipal corporation (“City”), and Visit Albuquerque, a New Mexico Nonprofit Corporation, 20 First Plaza NW, Suite 601, Albuquerque, New Mexico 87102 (“Contractor”).

## RECITALS

WHEREAS, in accordance with the City’s Public Purchase Ordinance, the City desires to engage with a qualified destination marketing organization (“DMO”) to promote Albuquerque as an attractive destination for leisure and business travelers and to provide information to event organizers considering Albuquerque as an event location; and

WHEREAS, the Contractor is an accredited DMO tasked with promoting Albuquerque as a competitive and world-class leisure, meeting, convention and sports destination and as a dynamic place to live and work; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

**1. Scope of Services.** The Contractor shall perform the following services (“Services”) in a satisfactory and proper manner, as determined by the City:

**A. Meeting and Group Marketing and Sales.** The Contractor shall promote and publicize Albuquerque as a place to hold organized events, both Citywide and smaller events. The Contractor shall also promote and publicize for groups interested in meeting and convening for sports activities, and in exhibiting, educating, or any other type of session that requires an overnight stay in Albuquerque. The Contractor’s meeting and group marketing and sales shall be executed by qualified staff that specialize in the following areas:

- (1) Albuquerque Convention Center Bookings (for periods of eighteen (18) months or beyond);
- (2) Hotel-based groups;
- (3) Sports;
- (4) Corporate sales meetings, incentive, and other events; and
- (5) Event services.

The Contractor shall form and maintain cooperative relationships with the City, the local lodging industry, and other local stakeholders in an effort to succeed in these efforts. The Contractor shall formulate a plan to regularly conduct Familiarization Trips to promote group sales.

**B. Destination Marketing.** The Contractor shall market and promote

Albuquerque as a destination for tourism. The Contractor shall provide regularly updated promotional literature and media presentations (“Marketing Materials”). The frequency of changes to the Marketing Materials shall accurately reflect the new positive changes in the City landscape, as determined by the City and the Contractor. The Contractor shall implement a comprehensive plan for the distribution of the Marketing Materials. Destination Marketing services include the following areas of responsibility:

- (1) Advertising and marketing;
- (2) Visitor guides and collateral materials;
- (3) Social media and website; and
- (4) Group tours.

The Contractor shall form and maintain cooperative relationships with the City, the local lodging industry, the New Mexico State Tourism Department, and other local stakeholders in an effort to succeed in these efforts. The Contractor shall identify opportunities for key City Officials to attend marketing and promotional events, and shall coordinate and provide travel and accommodations for those Officials to attend the events, in accordance with all applicable laws, ordinances, rules, regulations and policies.

**C. Destination Management Services.** The Contractor shall focus on optimizing the experience of tourists, business travelers, and convention and meeting attendees once they arrive in Albuquerque. Destination Management Services include the following:

- (1) A minimum of two (2) visitor center operations in highly visible and accessible locations in the City, operated seven (7) days per week for a minimum of seven (7) hours per day, including one (1) center at the Albuquerque airport, staffed with trained volunteers who provide information services to visitors, assist visitors with hotel and entertainment bookings, and otherwise promote Albuquerque and its attractions;
- (2) Coordination of lodging services;
- (3) Coordination of transportation services;
- (4) Tourist inquiry fulfillment; and
- (5) Other Destination Management Services, identified by the City.

**D. Services Involving Hispanic and Native American Recruitment.** The Contractor understands that the City annually appropriates funds for contractual services for the purpose of recruiting Hispanic and Native American conventions, trade shows and corporate meetings to the Albuquerque Convention Center and Albuquerque hotels. The Hispanic and Native American tourism entities that contract with the City are responsible to create media materials, collaterals and promotional materials (in Spanish and other languages when appropriate) to recruit targeted Hispanic and Native American visitors to Albuquerque. Those entities provide Destination Management Services related to Hispanic and Native American meetings and groups. The Contractor, upon request by the City, shall offer to collaborate with those entities and enhance their efforts and services to ensure Albuquerque is as successful as possible in endeavors related to recruitment of Hispanic and Native American visitors and tourism. Upon request and guidance from the City, Contractor shall provide Destinations International (DI) Event Impact Calculator

data for group meetings and sporting events generating an overnight stay in Albuquerque that were booked by the City’s Hispanic and Native American tourism contractors. In accordance with the license of the Event Impact Calculator with Destinations International, contractor is the single source license holder of the tool for its corresponding destination.

In calculating the direct spend, the Contractor shall use the latest version of Destinations International ("DI") Event Impact Calculator ("EIC") or Sports Module Event Impact Calculator ("SMEIC"). The City’s Hispanic and Native American tourism contractor must provide Contractor with all the necessary data inputs, as defined by the Contractor, in order for Contractor to calculate an event’s estimated economic impact. Contractor will provide the City’s Hispanic and Native American tourism contractor with a list of required data inputs that are based on industry best practices. Contractor is not responsible for verifying the accuracy of the data inputs it is provided. If manual entry is substituted or supplemented for DI EIC or DI SMEIC in calculating the economic value of an event, the Contractor shall explain the name of the event, reason for override and formulas used in the override.

**E. Media Library.** The Contractor shall provide City departments with full access to its online Media Library content of photography, videography and digital content (“Content”). The Contractor grants to the City the right and license to reproduce, display, transmit, distribute and create derivative works of the Content through all media now known or hereinafter developed in connection with any marketing, public relations or promotional activities of the City, without additional compensation, royalties, or remuneration of any type. Contractor warrants that it has obtained from all persons and entities whose copyrights, trademarks or other proprietary rights are included in the Content such written and signed permissions and consents, including those related to publicity, privacy, and any intellectual property rights, as are or may be reasonably necessary for the City to exercise the rights granted under this Agreement.

**2. Performance Measures.** The Contractor shall track and report (See Section 10) the Performance Measures set forth below. Each Performance Measure shall be consistently applied throughout the term of this Agreement and will be subject to audit by the City and annual review of relevance by both the City and the Contractor. The City will measure Meeting and Group Marketing and Sales and Destination Marketing performance based on the Performance Measures. Parties will establish such targets through mutual written agreement. The Parties further agree that there will be no opportunity for Contractor to receive incentive payments based on performance.

The City requires the Contractor to report the following monthly (except for where quarterly or annual reporting is indicated below).

<b>Meeting and Group Marketing &amp; Sales Reporting</b>	
1a	No. of Total Citywide Definite Booked Events
1b	No. of New Citywide Booked Events
1c	No. of Total Citywide Definite Events Booked Room Nights

1d	No. of Total Citywide Definite Event Attendees
1e	Direct Spend from No. of Total Citywide Definite Events
2a	No. of Total Booked Events for Sports Events (Citywide and Non-Citywide)
2b	No. of Total Booked Room Nights for Sports Events
2c	No. of Total Sports Event Attendees
2d	Direct Spend from No. of Total Sports Events
3a	No. of Total Non-Citywide Definite Booked Events
3b	No. of Total Non-Citywide Definite Events Booked Room Nights
3c	No. of Total Non-Citywide Definite Event Attendees
3d	Direct Spend from No. of Total Non-Citywide Definite Events
4	No. of Meeting Planners Hosted on Familiarization Trips and Site Visits (annually)
5	One-Year Comparative Business Occurring

<b>Destination Marketing Performance Reporting</b>	
1	No. of Positive National and International Travel Articles Generated for Albuquerque (quarterly)
2	Impressions and Publicity Value for Earned Media (quarterly)
3	Positive Quality Media Coverage (quarterly)
4	Advertising Impressions
5	Media Placement Performance (annually)
6	Website User Sessions
7	No. of Social Media Followers
8	Social Media Engagement
9	Visitors Guide Inquiry Fulfillment, Online and Print
10	No. of Group Tours (annually)



11	Travelers Entering Visitors Centers
12	No. of Hospitality Employees Trained Through Albuquerque Community Experience Program

C. Other Industry Indicators. The City requires the Contractor to report the following either monthly or annually, as indicated below.

<b>Meeting and Group Marketing &amp; Sales Industry Indicator</b>	
<b>Indicator</b>	
1	Group Business Hotel Satisfaction (based on survey of hotels with 500 or more square feet of meeting space), report with an action plan (annually)
2	Meeting Planners Satisfaction (based on survey), report with an action plan (annually)
<b>Indicator</b>	
1	Hotel occupancy rate compared to U.S. average using Comp Set (monthly)

**Annual Review.** Additionally, all Performance Measures will be regularly, at least annually, reviewed to ensure relevance over time and if previously unknown or newly developed measurements are available to either replace or enhance these measurements.

**Lost Business.** The Contractor will report, quarterly, the number of events, including Albuquerque Convention Center Events, non-Convention Center Events, and sports events that chose not to book at the Albuquerque Convention Center after initially considering the venue. The Contractor shall provide the name of the group, the estimated number of total room nights, attendance, and Direct Spending that these events would have brought to the City as well as the reason for the loss. The Contractor shall also provide the top five (5) destinations that were chosen instead of the Albuquerque Convention Center for these events.

**Cancellation of Definite Bookings.** The Contractor shall report, quarterly, all cancellations of definite bookings including the fiscal year originally booked, fiscal year impacted, corresponding estimated Direct Spend, and the reason for cancellation.

**3. Definitions.** The terms below shall have the following definitions for purposes of this Agreement.

A. "Albuquerque Convention Center Event" means a meeting, convention, trade show, sports event, or other event using the Albuquerque Convention Center.

B. "Booked event" means a successful acquisition of an event which has been confirmed in writing to the Contractor. An event will be considered booked within the fiscal year in which it was confirmed.

C. "Booked rooms" means successful acquisition of rooms which have been confirmed in writing to the Contractor. Rooms will be considered booked within the fiscal year in which they were confirmed.

D. "Business Climate Changes" means substantial changes, outside of the control of the Contractor, in the Meeting, Group Marketing and Sales, and Destination Marketing industry, which causes a significant decrease in the ability of the Contractor to achieve its performance.

E. "Citywide" means a meeting, convention, trade show, or other event using a minimum of four hundred (400) peak room nights.

F. "Comp Set" means Austin, TX , Charlotte, NC , Colorado Springs, CO Denver, CO, Little Rock, AR, Oklahoma City, OK, Phoenix, AZ, Portland, OR, Salt Lake City-Ogden, UT, and Tucson, AZ, which are the identified cities that the City will use to compare to its hotel performance.

G. "Destination Marketing Organization" or "DMO" means an organization which promotes a location as an attractive travel destination and exists to provide information to leisure travelers and to encourage event organizers to choose their location for meetings, incentives, conferences and exhibitions, or as so defined under the City of Albuquerque Public Purchases Ordinance, Sections 5-5-1 et seq.

H. "Direct Spend" means all expenditures associated with an event as measured by the following. In calculating the direct spend, the Contractor shall use the latest version of Destination Marketing Association International ("DMAI") Event Impact Calculator ("EiC") or Sports Module Event Impact Calculator ("SMEIC"). If manual entry is substituted or supplemented for DMAI EiC or DMAI SMEIC in calculating the economic value of an event, the Contractor shall explain the name of the event, reason for override and formulas used in the override.

I. "Familiarization Trips" means group trips offered to meeting planners, organizers, media, and group tours to familiarize entities with the City.

J. "Hospitality Fees" means those fees authorized under the City of Albuquerque Hospitality Fee Ordinance, Sections 4-8-1 et seq.

K. "Hotel Satisfaction" means the quantitative or qualitative measurement of the satisfaction level of the hotels completing a survey or making other communication with the Contractor.

L. "Performance Measure" means the measures under which the City will use to determine performance and total compensation.

M. "Lodgers' Tax" means those taxes authorized under the City of Albuquerque Lodgers' Tax Ordinance, Sections 4-4-1 et seq.

N. "Lost Business" means an event for which the Contractor generated a lead and expended efforts to bring the event to the City as verified by an auditable sales file for that client but was not able to book the event.

O. "Meeting Planners Satisfaction" means the quantitative or qualitative measurement of the satisfaction level of the meeting planners completing a survey or making other communication with the Contractor.

P. "Membership and Partner Expenses" means expenses that are related specifically to membership and partnership transactions funded with non-city revenue.

Q. "New Citywide Event" means an event that has not been booked in three (3) years. For an event that spans three (3) years, only the first year will be used to measure whether a "new" event occurred. All years, in a multiple-year booking scenario, may be included in the initial calculation.

R. "Non-Citywide" means meeting, convention, trade show, or other event utilizing less than four hundred (400) peak room nights.

S. "Non-Convention Center Event" means a meeting, convention, trade show, or other event using meeting or exhibit space at a hotel or other facility in Albuquerque.

T. "Site Visit" means individual trips offered to meeting planners, organizers, media, and group tours to familiarize entities with Albuquerque.

U. "Social Media" means Twitter, Instagram, Facebook, and other social media.

V. "Subcontractor" means any individual or business hired by the Contractor to perform part of the work covered in the Scope of Services section of this Agreement (Section 1A through 1E). For purposes of this definition, media buys and software licenses or subscriptions are considered purchases, not subcontracts.

W. "Support Staff to Sales Staff ratio" means the number of administrative sales staff personnel as compared to the sales managers.

X. "Work" means third-party promotional materials and photography.

**4. Use of Lodgers' Tax and Hospitality Fees.** In accordance with the City of Albuquerque Lodgers' Tax Ordinance, Sections 4-4-1 et seq., the Contractor agrees to limit expenses of Lodgers' Tax to activities and services directly related to advertising, publicizing, and promoting tourist-related attractions, facilities, and events. Similarly, in accordance with the City of Albuquerque Hospitality Fee Ordinance, Sections 4-8-1 et seq., the Contractor agrees to limit

expenses of Hospitality Fees to the purchase of advertising to publicize and promote tourist-related attractions, facilities, and events. No other use of Lodgers' Tax or Hospitality Fees is authorized.

**5. Membership and Partner Expenses.** The Contractor agrees that revenue from Lodgers' Tax and Hospitality Fees cannot be used for Membership and Partner Expenses. The Contractor shall maintain a separate accounting of the Membership and Partner Expenses and program revenue during the term of this Agreement, and make information on these accounts available to the City upon request.

**6. Required Board Structure.** The Contractor agrees to ensure their bylaws require a board with membership as follows:

A. Six (6) of the members must represent lodging ownership and/or operating interests. Among the lodging industry representatives, at least one (1) member must represent the Greater Albuquerque Hotel and Lodging Association, one (1) must represent short-term rentals and three (3) members must represent full-service hotels that have at least 15,000 square feet of function space;

B. The manager of the Albuquerque Convention Center, non-voting, (or a designee);

C. Four (4) members must represent non-lodging interests in the hospitality industry which may include: food and beverage service providers, destination management organizations, event planners, travel planners, or transportation service providers, attractions; etc., and, if available, one (1) meeting/event professional;

D. Two (2) members must represent general business industries;

E. Two (2) Albuquerque City Council Members (or their designees), non-voting;

F. The Mayor of the City of Albuquerque (or a designee), non-voting;

G. One (1) non-lodging interest member of the Lodgers' Tax Advisory Board; and

H. The President/CEO of the Contractor, non-voting.

**7. Required Executive Committee Structure.** The Contractor agrees to require that its Executive Committee include the board chair, vice-chair, the immediate past chair, the secretary, one (1) at-large member approved by the Mayor, one (1) Mayor's designee (non-voting), one (1) City Council designee (non-voting), and the President/CEO of the Contractor (non-voting). No more than two (2) of the voting members will be from the lodging ownership and/or operating interests (lodging) category. The City Administration will approve/disapprove within fifteen (15) days and notify City Council of the Mayor-approved at-large member.

**8. Approval of President/CEO.** The Contractor agrees that its Board of Directors shall select, appoint, and supervise the President/CEO. The Contractor further agrees that the Board shall obtain City Administration approval of the selection or appointment of any future individuals recommended for the position, and the City Administration may, in its discretion, reject any such recommendations before the initial hire, within fifteen (15) days of notification by the Contractor's Board regarding the potential hire. City Administration will notify City Council of the City-approved hire.

**9. Reporting.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City. The Contractor agrees to submit the following specific reports to the City in the timing and manner set forth below:

**A. Marketing/Operational Plan.** The Contractor shall provide to the City an annual marketing and operational plan with a proposed budget plan for marketing and booking: the Albuquerque Convention Center; Non-Center Convention meetings and events; sports conventions, meetings and events; convention services/support; leisure tourism/destination promotion and Hospitality Fee Advertising. The plan shall be due no later than June 15 of each year.

**B. Expense by Program.** The Contractor shall report to the City expenses by program on a quarterly basis. Programs should include, but are not limited to: (a) Meeting and Group Marketing and Sales, which consists of conventions, meetings, events, sports, bookings and event services, sales, marketing and support services; and (b) Destination Marketing, which consists of tourism, leisure travel, marketing, communications and support services.

**C. Financial.**

(a) **Monthly Balance Sheet and Income Statements.** The Contractor shall provide monthly balance sheet and income statement reports. Balance sheets should reflect comparatives to the prior year for the same period; income statements should reflect comparatives to prior year and year to date budget. Reports are due by the 20th day of the month for the previous month.

(b) **Annual Financial Audit Report.** The Contractor shall have an independent certified public accountant ("CPA") complete a full audit of Contractor's financial statements. The audit shall validate that City and Contractor's partner funds are separated. The Contractor shall pay for all services rendered by the CPA in accordance with this paragraph. If directed by the City, the CPA's Statement of Work for the full audit shall be coauthored by the Contractor and the City. All reports and documentation

(financial statements, compliance and management letters, internal control documentation and opinion letters) from the CPA shall be submitted to the City by the Contractor no more than one hundred twenty (120) days after the end of each fiscal year, after the reports and documentation are accepted by the Contractor's Board of Directors.

**D. Performance Measures.** The Contractor shall provide monthly reports, where applicable, on Performance Measures as listed in Section 2 and in the format set forth therein. If the Contractor desires to submit additional Performance Measures, those Performance Measures shall be reported in a supplemental report.

**E. Organizational Chart.** The Contractor shall provide or make available for inspection, upon the City's request and to be kept confidential except as otherwise required by law, an organizational chart for Contractor, to include key personnel.

**F. Annual Report.** A final annual report shall be produced and submitted to the City by the Contractor within ninety (90) days after the close of each fiscal year and shall include an analysis of the effectiveness of the various programs. Any updates made to the Comp Set used by Contractor shall be included in the Annual Report.

**10. Right to Audit.** The Contractor agrees that the City has the right to audit the Contractor's records with respect to all matters covered in this Agreement, and expressly agrees to the City's right to engage a third party to audit all Performance Measures and financial statements.

**11. Time of Performance.** Services of the Contractor shall commence upon July 1, 2023, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed June 30, 2030. This agreement may be extended for one (1) additional two (2) -year period upon mutual written agreement of the parties, on the same terms and conditions as herein contained. The City and Contractor ratify all actions taken by the parties pursuant to this Agreement from July 1, 2023 through to the execution of this Agreement. Further, the City and Contractor explicitly agree that all of the terms and conditions of this Agreement, including but not limited to insurance requirements and indemnification, are applicable continuously commencing on July 1, 2023.

**12. Compensation and Method of Payment.**

**A. Compensation.** For performing the Services described in Section 1, beginning July 1, 2023, the City will pay the Contractor a Contract Amount, defined below, which shall be determined as follows:

(a) Beginning July 1, 2023, the payment billing process will be based on a three (3) step process as follows:

1. By the tenth (10th) day of each month, the City will provide Contractor with a Lodgers' Tax and Hospitality Fees monthly revenue collection report that details the actual revenue received two (2) months prior. This two-month reporting lag is a product of the collection cycle. For example, the revenue report for January 2023 activity is due on March 10, 2023; and,
2. The City's Treasury Division of the Department of Finance and Administrative Services will email the Contractor's President and CEO the revenue collection report at armenta@visitabq.org by the 10th of each month; and
3. Contractor will bill the City at the rate of forty-two percent (42%) of the actual revenue reported for both Lodgers' Tax and Hospitality Fees for the billing month ("Contract Amount"). For example, if the combined total sum collected for Lodgers' Tax and Hospitality Fees in January 2023 is One Hundred Thousand Dollars (\$100,000.00) in total, then Contractor would bill the City a total of Forty-two Thousand Dollars (\$42,000.00) for March 2023.
4. The Contract Amount shall constitute Contractor's entire compensation for the Services outlined under the scope of this Agreement. There will be no opportunity for Contractor to earn incentive payments based on performance.
5. Any additional services outside the scope of this Agreement must be contracted for separately between the City and Contractor.

**B. Method of Payment.**

Payments shall be made to the Contractor monthly upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

**C. Appropriations.** Notwithstanding any other provision in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council unappropriates or deauthorizes funds during a fiscal year, this Agreement may be terminated upon thirty (30) days' written notice given by the City to all other parties to this Agreement. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.

**D. Responsibility to Monitor Contract.** Contractor is responsible for ensuring that the Contractor does not bill for Services in an amount that exceeds the total contract amount. With each invoice submitted to the City, the Contractor shall include a ledger report that identifies the total amount the Contractor has billed for Services under this Agreement and any Supplements to this Agreement. If at any time the Contractor determines that payment for Services

may or will exceed the total amount provided in this Agreement and any Supplements to this Agreement, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor's billing exceeds the amount of this Agreement and any Supplements, the City may stop or delay payment, or the Services may be ceased or delayed at the City's request.

**13. Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

**14. Personnel.**

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. The Contractor may subcontract the Services under this Agreement without the prior written approval of the City. Contractor must provide the City with written notification of subcontracted Services valued over One Hundred Thousand (\$100,000.00) within thirty (30) days following a prior month where such payment occurred. Any Services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement.

**15. Indemnity.** The Contractor agrees to defend, indemnify, and hold harmless the City and its officials, agents, and employees from and against any and all claims, suits, demands, actions, or proceedings of any kind brought against any of those persons because of any injury or damage received or sustained by any person, persons, or property, which injury is arising out of or resulting from the Contractor's provision of goods or Services under this Agreement, or by reason of any asserted act or omission, neglect, or misconduct of the Contractor or Contractor's agents, employees or subcontractors, or the agents or employees of any subcontractor of Contractor, whether direct or indirect. The defense and indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

**16. Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance policies in the kinds and amounts provided below, written with insurance companies authorized to do business in the State of New Mexico, which policies cover all operations under this Agreement, whether Services or operations are performed by Contractor or its agents. Before commencing the Services, and upon



renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates of insurance, in form satisfactory to the City, showing that Contractor has complied with this Section. All certificates of insurance shall be provided upon execution of this Agreement and upon any cancellation or change in the policy, and the certificates shall provide that thirty (30) days' prior written notice of any cancellation, material change to, or non-renewal of a policy be given to:

Risk Manager  
Department of Finance and Administrative Services  
City of Albuquerque  
P.O. Box 470  
Albuquerque, New Mexico 87103

Various types of required insurance may be written in one or more policies. With respect to all commercial general liability coverages required, the City shall be named as an additional insured, which shall be reflected on all certificates of insurance and endorsement documents. All coverages afforded shall be primary with respect to operations provided. The kinds and amounts of insurance required are set out below:

**A. Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 5,000	Medical Payments

The policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

**B. Automobile Liability Insurance.** An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy of insurance must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles and other equipment, both on and off work.

**C. Professional Liability (Errors and Omissions) Insurance.** Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

**D. Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico (the "Act"). If the Contractor has determined that the Contractor is not subject to the Act, the Contractor shall certify in a signed statement that the Contractor is not subject to the Act. The Contractor shall notify the City and comply with the Act if the Contractor becomes subject to the Act during the term of the Agreement.

**E. Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

**17. Discrimination Prohibited, Civil Rights Compliance.** In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended. The Contractor agrees to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City's Office of Civil Rights.

**18. ADA Compliance.** In performing the Services required under the Agreement, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the "ADA") that are imposed directly on the Contractor or that would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against any of those parties as a result of any act or omission of the Contractor or its agents in violation of the ADA.

**19. Conflict of Interest.** No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

**20. Interest of Contractor.** The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

**21. Accreditation.** The Contractor shall maintain its accreditation through the Destination Marketing Association International in a timely manner to avoid expiration.

**22. No Collusion.** The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud, and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City for the purpose or with the intention of securing: this Agreement; a subsequent Agreement; more favorable treatment with

respect to this Agreement; or more favorable treatment with respect to making any determinations regarding performance under this Agreement.

**23. Debarment, Suspension, Ineligibility and Exclusion Compliance.** The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

**24. Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

**25. Open Meetings Requirements.** Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

**26. Public Records.** The parties acknowledge that the City is a government entity subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding any other provision of this Agreement, the City shall not be responsible to Contractor for any disclosure of Confidential Information pursuant to that Act or pursuant to the City's public records act laws, rules, regulations, instructions or any other legal requirement.

**27. Establishment and Maintenance of Records.** Records shall be maintained by the Contractor in accordance with applicable laws and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after receipt of final payment under this Agreement.

**28. Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Contractor shall make all of the Contractor's records with respect to all matters covered by this Agreement available to the City for examination. The Contractor shall allow the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data related to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and to appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

**29. Ownership, Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**30. Compliance With Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

**31. Changes.** The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

**32. Assignability.** The Contractor shall not assign or transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the City.

**33. Termination for Cause.** If, for any reason, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any provision of this Agreement, the City has the right to terminate this Agreement by giving written notice of the termination to the Contractor and specifying a termination effective date at least five (5) days after notice is provided. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs, and reports prepared by the Contractor under this Agreement shall, at the option of the City, become the City's property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed under the Agreement. Notwithstanding any other provision of this section, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

**34. Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice of the termination in writing to the Contractor. If the Contract is terminated as provided herein, the Contractor will be paid an amount that bears the same ratio to the total compensation provided for under the Agreement as the Services actually performed bear to the total Services required under the Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the Termination for Cause provision shall apply.

**35. Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

**36. Enforcement.** The Contractor agrees to pay to the City all costs and expenses, including reasonable attorneys' fees, incurred by the City in exercising any of its rights or remedies

in connection with the enforcement of this Agreement.

**37. Entire Agreement.** This Agreement, including any explicitly stated and attached exhibits, constitutes the full, final, and entire agreement of the parties and incorporates all of the conditions, agreements, understandings and negotiations between the parties concerning the subject matter of this contract, and all such agreements, conditions, understandings and negotiations have been merged into this written Agreement. No prior condition, agreement, understanding, or negotiation, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in writing in this Agreement.

**38. Applicable Law and Venue.** This Agreement is governed by and construed and enforced in accordance with the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising in connection with this Agreement is Bernalillo County, New Mexico.

**39. Force Majeure.** The City shall not be liable for failure to perform its obligations under this Agreement, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the City. Such causes (“Force Majeure Events”) include, but are not restricted to: acts of God or the public enemy; acts of State, Federal or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; flood; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the City shall promptly inform the Contractor in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. The parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by the City as a result thereof. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

**40. Electronic Signatures.** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**41. Approval Required.** This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required