

Contract No. _____

CONTRACT FOR SERVICES
CITY OF COLORADO SPRINGS
AND
COLORADO SPRINGS CONVENTION AND VISITORS BUREAU

THIS AGREEMENT ("Contract") is made and entered into as of the 1st day of January, 2023, by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and the Colorado Springs Convention and Visitors Bureau – Visit Colorado Springs (VCOS), a Colorado nonprofit corporation (the "Bureau"). City and Bureau may be collectively referred to herein as the "Parties". Except as otherwise stated herein, this Contract supersedes and replaces the previous contract for services dated January 1, 2020, which is identified as Contract Number 009763.

WITNESSETH

WHEREAS, the City is vitally interested in the economic health of the City and the Pikes Peak Region; and

WHEREAS, the City has enacted a Lodgers, Campgrounds and Automobile Rental Tax ("LART") to provide revenue to the City to attract visitors and to enhance the economy of the City and the Pikes Peak Region (City Code § 2.9.101); and

WHEREAS, pursuant to City Code § 2.9.110, the City Council has established an advisory committee "to make recommendations to the City concerning expenditures" of the LART (the "LART Committee"); and

WHEREAS, the Bureau, which represents that it qualifies as an IRS Code § 501 (c) (6) entity, has established a visitor industry and convention promotional program providing consistent and long-range visitor promotion since 1980; and

WHEREAS, by attracting visitors, promoting conventions, and supporting economic development activities, this program will fulfill the purposes of the LART; and

WHEREAS, City Code § 2.9.111 authorizes the City to contract with any person or entity to effectuate the purposes of the LART, and City Code § 2.9.103 defines visitor promotion to include a contractual relationship with an established nonprofit organization or agency in the local area which provides consistent and long-range visitor promotion; and

WHEREAS, the Bureau is an established nonprofit organization accredited by the Destinations International since 2010 and reaccredited with distinction in 2019.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions, and mutual benefits set forth below, the City and Bureau agree as follows:

1. Purpose. The purpose of this Contract is to establish the amount, duration, terms and conditions for a Contract for Services between the City and the Bureau to effectuate the purposes of the LART.

2. Services Provided by the Bureau. The Bureau agrees to provide to the City the following services ("Services").

a. Visitor and Convention promotion. The Services will be included in and provided as described in Bureau's annual Marketing Plan. The Bureau shall submit the Marketing Plan to the Mayor, LART Committee and City Council not later than January 1 of the initial contract year, i.e., January 1, 2023 and January 1 of each subsequent year during the term of this Contract. Services will be provided in an amount and manner to help effect the projected outcomes outlined in the Marketing Plan. Services shall include:

i. Digital, online, television, radio, and print advertising, billboards and other visual displays, and other promotional practices as customarily used for promoting tourism for Colorado Springs and the greater Pikes Peak Region.

ii. Digital, online, television, radio and print advertising, billboards and other visual displays, and other promotional practices as customarily used for bringing conventions, conferences, and meetings to Colorado Springs and the greater Pikes Peak Region.

iii. Research and implementation of new forms of media and industry innovations related to promotional activities and promoting tourism.

iv. The leasing, purchasing, construction, maintenance or otherwise securing of site or sites for visitor information offices and promotional centers in Colorado Springs and the greater Pikes Peak Region.

v. Expenditures for administration, salaries, and other incidental expenses associated with the above.

vi. Expenditures of funds for the promotion of special events in the Pikes Peak Region that will garner state-wide and national attention and drive tourism to the Pikes Peak Region. The Bureau shall, as the City desires, work cooperatively with the City on special event processes, promotion and organizer requests for funding. The Bureau will evaluate requests for Bureau advertising funds or promotional assistance from associations or events and will make decisions concerning the appropriate response to said requests. These decisions shall be based on the Bureau's analysis of the value of such events, either through visitor spending, media attention, or the possibility for growth in the future, within the constraints of the Bureau's annual budget and funding.

- vii. Expenditure of funds for supporting, increasing awareness of and promoting the Colorado Springs film industry through marketing activities directed by the Bureau, including engaging the services of film staff and/or contractors to provide film liaison and location services and scouting upon request to members of the film production community.

- b. Review and rate LART Event Applications. Bureau will review LART event applications related to general visitor and convention promotion and provide a rated list of the relevant LART Event Applications to the LART Committee and the City of Colorado Springs, for each LART application cycle. The Bureau and the City will work together to create a transparent and defensible rubric to be used in the rating of applications. The review and rating of visitor and convention promotion related event applications will include funding recommendations. The ratings and funding recommendations will be provided to the LART Committee.

3. Funding Agreement. Subject to appropriations and the terms and conditions of this Agreement, the City shall pay Bureau five million dollars (\$5,000,000) from the LART Fund for its Services for the first year of this Contract. When the Bureau has a promotion idea/event that, on its own merits could attract additional tourism activity, the Bureau may submit the plan for LART Committee and City Council consideration. Payment for Services shall be made monthly according to a schedule agreed upon by the City and the Bureau; provided, however, that no payment shall be made until this Contract has been fully executed by the Parties.

- a. The amount of funding payable to the Bureau under this provision shall increase by five percent (5%) annually as of the first day of each year of the term of this Contract; provided, however, that if the revenue from LART that is budgeted by the City declines from the prior year or remains flat (0% growth from prior year), the funding shall not increase for that year and may be decreased proportionately to the revenue.

- b. If there is a LART tax rate increase during the term of this contract, the Bureau and the City of Colorado Springs will work together and have the option to amend this contract and funding amounts as both parties see fit.

4. Administrative Control of Funds

- a. The Bureau warrants and covenants that it will act and spend funds generally in accord with its annual Marketing Plan.

- b. The Bureau shall submit to the City on or before April 1, 2024, with respect to the first year of this Contract, and by April 1 of each year following each subsequent year during the term of this Contract, an audit by an independent accounting agency approved by the City Auditor of all funds paid by the City to the Bureau and the expenditure of those funds and other Bureau revenue earned under this Contract. The expenses of this audit shall be paid by the Bureau as an expense of administration.

c. The Bureau shall keep or cause to be kept in Colorado Springs true, accurate, and complete records of business conducted pursuant to this Contract. If any of such records are kept outside the City of Colorado Springs, the Bureau shall make these records available to the City within the City without unreasonable delay and without expense. The Bureau agrees that the City shall have the right through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times for the purpose of determining the proper use of LART funds and the accuracy of the records and of the reports required to be made by the City pursuant to this section 4.

d. Before January 31 of each calendar year this Contract is effective, the Bureau shall establish annual goals for each Key Performance Indicator ("KPI") listed in Exhibit A attached hereto and shall communicate those to the City Contract Administrator. The Bureau shall submit to the City and the LART Committee a report of these KPI's under the terms of this Contract twice per year. The 6-month report shall be submitted in writing by the last day of July of the contract year. The end-of-year annual report shall be submitted in writing by the last day of March of the year following the contract year. These reports will be tendered to the Mayor and the LART committee. The Bureau shall present the reports to City Council at a Work Session in the month following submittal (two presentations per year). Should the data supporting various KPI's not be available from the source, Bureau shall use the latest data available and shall so note in its report. The report will include a presentation of year-to-date progress in each of the KPI's included in Exhibit A, with goals and historical amounts, and shall include the Bureau's income statement and balance sheet (or similar documents) through the same period. Bureau shall endeavor to meet all established goals. Bureau shall include in the reports any special circumstances related to KPI performance and shall include discussion of steps being taken for those KPI's which are underperforming. Over the term of the contract, KPIs can be periodically evaluated for updates and relevancy.

e. To effectuate and measure KPI's in Exhibit A related to Revenue per Available Room amounts, Bureau shall utilize Smith Travel Accommodations Reports ("STAR") from STR Global. City and LART Committee acknowledge the copyright restrictions on the STAR data and will not copy nor publish any backup data used by Bureau to develop Revenue per Available Room KPI's. Bureau shall also use the information published in the STAR to develop benchmarks against other cities or regions of similar size, demographics, etc., which benchmarks may be used to develop key performance indicators (KPI's) as determined cooperatively between the City, the LART Committee and the Bureau. For purposes of contract compliance, only the KPI's designated in Exhibit A shall be required to be reported.

5. Contract Term. This Contract will become effective on January 1, 2023 for an initial term of five (5) years, expiring on December 31, 2027, subject to prior termination for cause and the provisions specified in sections 8 and 9 which follow.

6. Management. The City hereby designates the City's Chief Financial Officer as Contract Administrator for the City whose responsibility is to ensure that the Services rendered are in compliance with the terms and conditions of this Contract.

7. Leasing or Purchase of Real Estate by the Bureau. The Bureau is hereby authorized to purchase or lease buildings or other real estate as may be necessary to perform the Services as set forth in this Contract. If the Bureau ceases to exist as an organization, the Bureau shall reimburse the City for any City monies used in the purchase of buildings or real estate. The Bureau shall not encumber any real estate purchased by the Bureau without prior approval of the City's Contract Administrator.

8. Termination; Right to Cure. This Contract may be terminated by either party for material breach of any of the terms and conditions of this Contract, including but not limited to any material failure to follow the annual Marketing Plan, but only if the breaching party fails to remedy the default within sixty (60) days of written notice from the other party. All payments and activities required under this Contract shall continue through the date of termination or otherwise as stated within this Contract.

9. Appropriation of Funds. This Contract is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Contract in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

10. Assignment. The Bureau shall not assign or otherwise transfer this Contract or any right or obligation under this Contract without the prior written consent of the City.

11. Law. This Contract is subject to and shall be interpreted under the law of the State of Colorado and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction shall exclusively be in the District Court for El Paso County, Colorado. The Bureau shall ensure that the Bureau and the Bureau's employees, agents, and officers are familiar with and comply with applicable federal, State, and local laws and regulations as now written or hereafter amended.

12. Worker's Compensation Insurance. The Bureau shall take out and maintain during the period of this Contract, Colorado Workers' Compensation Insurance for the Bureau and all

employees of the Bureau. If any Service is sublet by the Bureau, the Bureau shall require the subcontractor to provide this same coverage for the subcontractor and subcontractor's employees. Workers' Compensation Insurance shall include occupational disease provisions governing any obligations of the Bureau in accord with the provisions of the Workers' Compensation Act of Colorado.

13. Third Party Suits Not Authorized. It is specifically agreed between the Parties to this Contract that it is not intended by any provisions or any part of this Contract to create in the public or any member of the public a third party beneficiary under this Contract or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms and provisions of this Contract.

14. Indemnification. The Bureau agrees that the Bureau shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all loss, damage, injuries, claims, cause or causes of actions, or any liability whatsoever resulting from or arising out of or in connection with the Bureau's obligations, performance or actions under this Contract.

15. Independent Contractor. In the performance of the Bureau's obligations under this Contract, it is understood, acknowledged, and agreed between the Parties that the Bureau is at all times acting and performing as an independent contractor; and the City shall neither have nor exercise any control or direction over the manner and means by which the Bureau performs the Bureau's obligations under this Contract, except as otherwise stated within the Contract terms. The Bureau understands and agrees that the Bureau and the Bureau's employees, agents, servants, or other personnel are not City employees. The Bureau shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to the Bureau or any of the Bureau's employees, agents, servants, or other personnel performing serves or work under this Contract, whether it be of direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Bureau nor the Bureau's employees, agents, servants, or other personnel shall be entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits whatsoever.

16. Integration, Severability, Amendment and Counterparts. This Contract represents the entire agreement between the Parties and supersedes all prior discussions and written agreements or understandings; provided, however, that all obligations not performed or remaining incomplete under the previous contract for services between the Parties dated January 1, 2018, which is identified as Contract Number 009005, are not extinguished and shall be performed in accordance with said contract. This Contract may be amended only by an instrument in writing signed by the Parties. If any provision of this Contract is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Contract shall continue in full force and effect. This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

17. Signatures. The Parties represent and warrant that the person or persons executing this Contract have the necessary and appropriate authority and capacity to execute this Contract and to make this Contract fully binding upon and enforceable in accordance with its terms.


IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

CITY OF COLORADO SPRINGS

John W. Seithaus 12/6/2022
Mayor Date

ATTEST:

Denae Johnson 12/06/2022
City Clerk Date



APPROVED AS TO FORM:

[Signature] 12.6.22
Office of the City Attorney Date

**COLORADO SPRINGS
CONVENTION AND VISITORS BUREAU**

Douglas Rice 12/13/22
President and Chief Executive Officer Date

Susan Davis 12/13/22
CVB Board Chair Date

ATTEST:

Secretary Date

EXHIBIT A

Key Performance Indicators for 2023-2027 LART Funding Contract

Funding is provided in accordance with City Code § 2.9.111. This Contract calls for the promotion of tourism, recreational visitors, business meetings, conventions, and other special events, which attract visitors to the City and the greater Pikes Peak Region. The effectiveness and impact of LART funding for Visit Colorado Springs (VCOS) will be measured according to the Key Performance Indicators (KPIs) set forth in these categories:

Category #1: Industry Information

Lodgers and Auto Rental Tax has been a key component of VCOS funding for 30+ years. The assumption is that LART is generally representative of visitor numbers, and if visitors increase then LART should increase as well. While there are additional considerations in how LART changes, it is a reasonable and cleanly measured metric to use to judge the health of the tourism industry in Colorado Springs.

Smith Travel Research reports provide reliable Revenue per Available Room data for Colorado Springs MSA as well as a conglomeration of Front Range counties to judge whether hotel revenues are growing or declining at a rate greater or less than that grouping. RevPAR is a common hotel metric used to judge the health and profitability of that industry.

- **KPI Metric #1** – LART Tax Revenue to the City and percent change from previous quarter
- **KPI Metric #2** – Revenue Per Available Room (RevPAR) in Colorado Springs as reported by Smith Travel Research and percent change from previous quarter
- **KPI Metric #3** – Revenue Per Available Room (RevPAR) in Colorado Front Range as reported by Smith Travel Research and percent change from previous quarter

Category #2: Group Sales

VCOS will conduct a review of its group sales and report on its findings. Such review shall include attendance at trade shows, number of site visits, number of direct and indirect leads, number of group leads from new and existing accounts, and room nights booked for group travel.

Attendance at tradeshow allows VCOS staff to meet with meeting planners and similar people who may help drive group business to the Colorado Springs region. Direct and indirect leads are indicators of how productive and effective VCOS staff activity has been. Leads sent from new accounts indicate the reach VCOS has into the meeting and event planner industry to find businesses that have not likely been here before or those we have not impacted before. Average cost per lead is an indicator of success at finding leads, so that the same or similar expense divided by a larger number of leads gives a smaller cost per lead. VCOS uses an industry standard calculator (DMAI Economic Impact Calculator or EIC) to derive economic impact of room bookings that VCOS staff helped book.

- **KPI Metric #1** – Number of trade shows attended
- **KPI Metric #2** – Number of Site Visits/Inspections Hosted
- **KPI Metric #3** – Number of Site Visits who book, reported at end of year only
- **KPI Metric #4** – Number of Direct leads (leads sent directly from VCOS to appropriate hotel)
- **KPI Metric #5** – Number of Indirect leads (leads hotel receives electronically or from third parties)
- **KPI Metric #6** – Number of group leads from new accounts
- **KPI Metric #7** – Number of group leads from existing accounts
- **KPI Metric #8** – Cost per Lead for Group Business

- **KPI Metric #9** – Estimated room nights booked for group travel, definites
- **KPI Metric #10** – Estimated room nights booked for group travel, bureau assists
- **KPI Metric #11** – Group Servicing Activities provided to visiting groups

Category #3 – Websites

The focus of the VCOS website and VCOS edits to the Colorado Springs Wikipedia page should be to attract visitors to come to the Colorado Springs region for overnight stays; conversely, it should be an easy tool for meeting planners to research and connect with the meeting-focused venues in the market.

- **KPI Metric #1** – Total Website User Sessions
- **KPI Metric #2** – Number of Organic Sessions
- **KPI Metric #3** – Number of Unique Visitors
- **KPI Metric #4** – Top Referring Sites (see attachment)
- **KPI Metric #5** – Average Session Duration
- **KPI Metric #6** – Pageviews
- **KPI Metric #7** – Partner Click-Throughs

Category #4 – Social Media

Social media is an important channel to connect with many prospective visitors. The various media platforms allow VCOS to continue building its brand through the development of a robust, engaged following, which ultimately leads to increased audience reach. Fostering an online community of users and building these relationships will provide a valuable, authentic voice to our brand.

- **KPI Metric #1** – Number of Facebook Likes
- **KPI Metric #2** – Number of YouTube Views
- **KPI Metric #3** – Number of Instagram Followers
- **KPI Metric #4** – Number of Twitter Followers
- **KPI Metric #5** – Number of Pinterest Followers
- **KPI Metric #6** – Social Media Traffic to Website
- **KPI Metric #7** – Dollars spent on social media specific marketing

Category #5 –Partnership

A portion of VCOS revenue support is provided by its partners/members. These partners pay dues, buy advertising, pay to attend tradeshow with VCOS staff, pay to be part of larger advertising efforts and pay for leads, along with other various purchases. These payments indicate a belief that VCOS is providing a valuable service to partners.

- **KPI Metric #1** – Partnership Dues Received – Cash
- **KPI Metric #2** – Non-dues Partnership Payments Received - Cash
- **KPI Metric #3** – Co-Op Revenue - Advertising

Category #6 – Advertising

While this amount is heavily dependent on funding, dollars spent on advertising and social media marketing demonstrates from how much advertising has been purchased to market the region. Because marketing activities include staffing, sales and other expenses, advertising purchases can vary depending on the marketing strategy being used.

- **KPI Metric #1** – Dollars spent on advertising and social media marketing

Category #7 – Official Visitor Guide

As the primary collateral and fulfillment piece for VCOS, staff strives to drive potential visitors to order one of the Official Visitor Guides produced each year. Additionally, the guide is available electronically on the VCOS website. These numbers reflect VCOS activities and efforts in getting people to visit its website and order guides and to get them to respond to advertising by ordering guides. Finally, VCOS fulfills requests for guides from reader service and website requests, and many other sources. VCOS will report on how many Official Visitor Guides it distributes, and the number of visits to the electronic version of the guide, broken down by unique visitors, top referring sites, and average session duration.

- **KPI Metric #1** – Number of Official Visitor Guides ordered through Visitor Services
- **KPI Metric #2** – Number of Official Visitor Guides distributed through Visitor Services
- **KPI Metric #3** – Number of Official Visitor Guides printed and distributed (cert; slawson; vic; dia)
- **KPI Metric #4** – Number of Electronic Visitor Guide Sessions
- **KPI Metric #5** – Number of Unique Visitors to the Electronic Visitor Guide
- **KPI Metric #6** – Top Referring Sites for the Electronic Visitor Guide
- **KPI Metric #7** – Average Session Duration for the Electronic Visitor Guide
- **KPI Metric #8** – Electronic Visitor Guide Pageviews
- **KPI Metric #9** – Electronic Visitor Guide Pages per Session