

## AGREEMENT FOR VCB MARKETING SERVICES

THIS AGREEMENT IS MADE this 8<sup>th</sup> day of Sept 20 16,  
between the City of Grand Junction ("City") acting through its Visitor & Convention Bureau  
("VCB") and Mirror Pond LLC, hereinafter "Contractor." Contractor's  
Property: 171 Dike Road "The Camp"  
Federal I.D. # / TIN / SS#: [REDACTED]

### Recitals.

The City's People's Ordinance No. 34, imposed a Lodger's Tax for lodging and related purposes within the City. The City has used the proceeds to fund the VCB. The VCB advertises the community, promotes tourism and visits, and attracts conferences, conventions and meetings to the City. Contractor desires to obtain the benefits of the VCB's efforts and programs.

**In consideration** of the mutual benefits, promises and efforts of the parties as set forth, the parties agree as follows:

### **Remittances**

1. Contractor agrees to remit to the City, on a monthly basis, three percent (3%) of its gross revenue received or obtained from every purchaser of lodging, as provided herein.

### **No add on**

2. The Contractor may collect and itemize the amounts due hereunder from any purchaser of lodging and Contractor may itemize the amounts due hereunder on any bill, invoice or other record given to or made available to any purchaser.

### **Use of funds**

3. The City agrees to use such funds to supplement the efforts of the VCB.

### **No right to control VCB**

4. Contractor shall have no right to direct the efforts or decisions of the Visitor & Convention Bureau, but will rely, without any right of review, on the judgment and decisions of the VCB. For the benefit of Contractor and lodging properties within the City, the VCB agrees to continue its efforts to provide the usual and customary services and marketing.
5. The terms "Finance Director", "lodging," "purchase or sale," and "purchasing lodging," shall have the meaning described in said People's Ordinance 34, as amended.

### Definitions

"Gross revenue" for the purpose of this agreement means the total amount received in money, credits, property or other consideration valued in money from sales and/or purchases of services by Contractor for providing the right to use or possess for consideration any room or rooms for temporary occupancy or other facilities, such as and not limited to, condominium rooms, cabins, lodges, hotels, motels, mobile homes, mobile home parks, "bed and breakfasts," or revenues received under any concessions permit, right of access, lease, contract license to use or other arrangement or otherwise.

"Gross sale" means the total amount received in money, credits, property or other consideration valued in money from sales and purchases of lodging, as defined in this agreement, but excluding the amounts received pursuant to any state, county or municipal tax, and further excluding those revenues as provided in Section 7(b) hereof.

### Monthly reports

6. Contractor shall remit three percent of the total Gross Revenue received in exchange for lodging, to the Finance Director of the City not later than 20 days after the last day of each month and each payment shall be accompanied by a report for the applicable period.

### Exclusions

- 7.(a) Contractor shall be allowed, as a deduction against sales received by Contractor providing lodging:
  - (1) Refunds of sales actually returned to any purchaser;
  - (2) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale for lodging and does not include any adjustments for other services furnished by a vendor.
  
- (b) Contractor shall be allowed as exclusions against gross revenues for lodging:
  - (1) Charges for other services, such as food and/or telephone charges, furnished by a person providing lodging;
  - (2) Deposits placed by any purchaser with a request to hold a room for such purchaser for a future date until such time as said deposit has been credited against the purchase or sale;
  - (3) All sales to the United States government, the State of Colorado, its departments and institutions, the political subdivisions of the State, and the City of Grand Junction in their governmental capacities only;

- (4) All sales to those charitable, religious and eleemosynary organizations which have received from the federal Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue code as a tax exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

#### **Breach**

- 8.(a) Contractor shall be deemed to have materially breached this Agreement: if Contractor fails to make all payments as set forth herein or fails to submit complete, accurate and true reports as required herein or fails to allow complete access to the books and records of contractor for the purposes of auditing compliance with the terms hereof; if Contractor at any time, whether voluntarily or involuntarily, is the subject of a bankruptcy petition or if Contractor is placed in receivership or is the subject of an assignment for the benefit of creditors or has any assets or property seized under distraint for any taxes; or, if Contractor makes any false or fraudulent return or statement.
- (b) If Contractor breaches any provision of this agreement, VCB may, immediately upon mailing notice thereof to Contractor, cease any further efforts which are of benefit to Contractor.

#### **Liquidated damages**

9. Because the advertising and promotional materials prepared by the VCB are prepared once a year early in the calendar year and, once printed, are distributed throughout the year, it is impossible to accurately estimate the damages suffered by the City or the benefits received by Contractor in the event that Contractor fails, once the VCB has arranged to print its brochures, to comply with the provisions of this agreement throughout the calendar year for which marketing or promotion had occurred or for subsequent periods. Therefore, the parties agree that liquidated damages are an appropriate remedy available to the City in the event of breach by Contractor. This is so because it will be impossible to calculate the benefits received by the Contractor after printing has been arranged for. Thus, the parties agree Contractor breaches this agreement, the City shall be entitled to liquidated damages in the amount of five percent (5%) of Contractor's annual gross revenues.

#### **Rules and forms**

10. Contractor agrees to abide by the requirements of the Finance Director of the City with regard to remittances, forms and reports required pursuant to this agreement. For example, the Finance Director will provide for the form of reports on gross revenues and the nature and extent of records which the Contractor shall keep. Unless inconsistent with a term of this agreement, the rules and processes applicable to the City's lodging tax shall apply to the extent possible (since some provisions of such rules are specific to the collection of taxes and are not appropriate for enforcing a contract).

### **Records**

11. Each Contractor shall keep and preserve suitable records of all gross revenues received by Contractor and such are the records, books and accounts as may be required by the Finance Director in order to determine the amounts due and payable to the City hereunder. It shall be the duty of each Contractor to keep and preserve for a period of three years following the termination or expiration of this agreement all such books, invoices and other records and the same shall be open for examination without cost by the Finance Director at the location determined by the Finance Director. Normally, such review will occur at City Hall in Grand Junction, Colorado.

### **Underpayments**

12. In the event that any such audit, inspection or examination determines that the amount of gross revenues remitted to the City for any prior period is less than the full amount owing to the City pursuant to this agreement, the Contractor agrees that it shall pay, in addition to all other amounts owing to the City, to the City within 30 days of request by the City, ten percent (10%) of all amounts due and owing.

### **Confidentiality**

13. Parties agree that, to the extent allowed by law, the City shall treat all such reports and information received from the Contractor pursuant to this agreement as confidential and not open to the inspection of the general public. However, any officer or employee of the City who may be charged with the duty of enforcement of this agreement shall be entitled to inspect any such records and any information supplemental thereto.

### **Right of access**

14. The City's Finance Director or any of his agents or designees, shall have the right at any reasonable time to enter upon the premises of the Contractor to request to see the register or rate schedule maintained by the Contractor for the purpose of enforcing the terms of this agreement.

### **Right to investigate, conduct hearings**

15. For the purpose of enabling the City to ascertain the correctness of the monthly reports or the amounts remitted to the City, Contractor agrees that the Finance Director of the City may make such investigations and hold such hearings concerning the matters covered by this agreement and may examine any relevant books, papers, records or memoranda and that any employee, agent, officer or contractor who contracts with the Contractor shall at the request of the Finance Director make any and all such persons available at City Hall in Grand Junction for the purpose of taking their statement and reviewing their documents and knowledge.

**Estimates, penalty, assessment**

- 16.(a) In the event that the Contractor fails to remit all amounts due and owing to the City or fails to submit the required reports, the Finance Director may make an estimate based on the information available to the Finance Director of the amount of money owing to the City and, upon such basis, compute and assess, in addition thereto, an amount equal to ten percent (10%) thereof, together with interest on any such delinquent amounts at the rate of one and one-half percent (1½%) per month from the date when due until paid in full.
- (b) In such event, the Finance Director shall give to the Contractor written notice of such estimates, penalty and interest which notice shall be placed in the U. S. Mail, postage prepaid, First Class at the address of the Contractor.
- (c) Any such estimate shall become due and payable in full to the Finance Director from the Contractor twenty (20) days from the date of mailing the notice, provided however, that within such twenty (20) day period, the Contractor may submit a written petition to the Finance Director for a revision or modification of such amounts and, within such twenty (20) day period, furnish the Finance Director with such documents, facts and figures which show the correct amount.
- (d) The Finance Director may, following his review of the information supplied by the Contractor, modify the amount due and owing by the Contractor. Should a dispute arise between the Contractor and the City as to whether or not any amounts are due and owing to the City, Contractor shall nevertheless remit to the City and pay to the City, all such amounts. The Contractor may thereafter apply to the Finance Director for a refund of any such amounts paid to the City.
- (e) The Finance Director may waive, for good cause shown, any penalty, interest or other amount imposed as provided herein.

**Contractor's representations**

17. Contractor represents that it is the owner of the property and that it has the authority to enter into this agreement on the terms and conditions set forth. If Contractor needs to obtain the consent or agreement of another party in order to effectuate this agreement, Contractor agrees to do so. Contractor shall provide a copy of a corporate resolution establishing that a corporate officer who signs this agreement has the full authority to bind the corporation to this agreement.

**Deposit**

18. Contractor agrees to deposit, at the time of execution hereof, the sum of \$500.00 to be held by the City, without interest. Unless Contractor has breached this agreement, the City shall

return such deposit, without interest, within thirty (30) days of termination or expiration of this agreement unless Contractor owes money to the City in which case the City shall make appropriate deductions before remitting the balance of the deposit, if any, to Contractor.

**Binding nature**

19. This agreement shall bind the signatory parties and their respective heirs, successors and assigns.

**Contractor's remedies limited**

20. The Contractor's remedies, upon non-performance by the VCB, the City or the employees of either, pursuant to this Agreement, are limited as provided in this section. The Contractor shall give notice of default to the City Manager specifying the action giving cause to said default. The City shall have 30 days from its receipt of said notice to correct the alleged default. Upon the correction of said default within the 30 days period the agreement shall be restored and all terms and conditions will be in full force and effect. In the event a default is not timely corrected, the Contractor has only the right or remedy to sue for specific performance or to sue to recoup remittances made pursuant to section 1 hereof of which remittances were paid during period(s) when the VCB was in default. Further, except as specifically provided in the foregoing sentence, Contractor agrees that, in the event VCB, or the City, breaches this agreement or any provision hereof or acts or fails to act such that Contractor is injured or damaged, Contractor waives, and releases, the VCB and the City with respect to any rights to claim or obtain any damages whether indirect, special or consequential.

**Entire agreement**

21. This agreement constitutes the entire agreement of the parties and supersedes any prior discussions, agreements or negotiations.

**Notice**

22. Notice pursuant to this agreement shall be given by first certified mail to the address listed under the signature lines or to such other address as a party may hereafter designate by certified mail.

**Term**

23. The term of this agreement is for the period from **January 1, 2015 through December 31, 2015**. In the event People's Ordinance 34 is repealed, or found to be unconstitutional or unenforceable by a court of competent jurisdiction, this agreement shall terminate. This agreement shall terminate if the Property is annexed to the City; such termination shall be effective when the City's lodging tax becomes effective as to the Property.

**Collection costs**

24. In case of failure to pay the amounts owing to the City hereunder, or any portion thereof, Contractor agrees to pay to the City, in addition to amounts otherwise provided for herein, reasonable attorney's fees (including the cost to the City for the use of the City's attorneys), plus the costs of any experts, plus costs.

**Attorneys Fees**

25. Each party agrees to pay its own attorney's fees if litigation arises hereunder or as a result from enforcement or interpretation of this agreement.

**Statute of limitations**

26. Contractor agrees that the City may commence efforts to collect amounts due hereunder at any time during the three full calendar years after the date on which any amount was or is payable to the City. Contractor agrees to waive any statutory provision which is more favorable to the Contractor. In the event of a false or fraudulent report or remittance, Contractor agrees that the time within which the City may commence to collect amounts due hereunder shall be ten years after the date on which any amount is due or payable to the City.

**Severability**

27. The parties agree that the several provisions and terms of this agreement are intended to be severable. If any such provision, sentence, clause or term is declared unenforceable or invalid by a court of competent jurisdiction, such unenforceability or invalidity shall not effect the remaining terms, provisions, sentences or clauses.



City of Grand Junction  
250 North Fifth Street  
Grand Junction CO 81501

Attest:

*Stephanie Tuin*

Stephanie Tuin  
City Clerk

By:

*Barbara J. Bowman*

Barbara J. Bowman  
Division Manager  
Visitor & Convention Bureau

Attest:

Secretary

By:

*Kevin Bray*

(Please print name)

*Manager*

Title

Address:

*1015 N. 7th St.*

*GS, CO 81501*