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Mesa, Arizona 85211-1466

AGENDA 14
ITEM _____
DATE 6-22-09

TO: MAYOR AND CITY COUNCIL
THROUGH: CHRIS BRADY, City Manager
FROM: BRYAN RAINES, Deputy City Manager *BCR*
DATE: June 8, 2009

Since the inception of the Transient Occupancy Tax (bed tax), the City of Mesa has entered into a contract with the Mesa Convention & Visitors Bureau (MCVB) to promote tourism and convention business in Mesa. Attached is the proposed contract for FY 2009/10. The Mesa CVB estimates that the Transient Occupancy Tax will generate approximately \$1.8M in FY 2009/10. This is approximately the same that is estimated to be generated this year and lower than the \$2.4M generated in FY 2007/08.

The terms of the agreement require that the representatives of the Bureau report to the City Council periodically and that they contribute to the City of Mesa/Chicago Cubs spring training improvement project. The City also retains an administrative fee of \$25,000. In addition, the City retains an additional \$200,000 for capital needs at the Mesa Convention Center. The contract has been reviewed by Robert Brinton, Executive Director of the Mesa Convention & Visitors Bureau. It is recommended that the contract be added to the June 22 City Council meeting agenda for approval

Attachment:
1) Agreement

xc: Robert Brinton

MESA CONVENTION & VISITORS BUREAU AGREEMENT

This AGREEMENT is made and entered into effective as of the ____ day of _____, 2009 by and between the City Of Mesa, Arizona, an Arizona municipal corporation, hereinafter referred to as "CITY; and the MESA CONVENTION & VISITORS BUREAU, an Arizona nonprofit corporation, hereinafter referred to as "BUREAU";

RECITALS

- A. On the 6th day of March, 1985, the CITY amended the Transient Occupancy Tax Code, under which a tax is collected from motel and hotel operators based upon the size of the hotel/motel and the number of occupied rooms, with the intention that the proceeds from the tax be used to develop a program to promote tourism and conventioning in Mesa; and
- B. Due to the passage by the voters of Proposition 400 on March 26, 1996, the CITY has amended the Mesa City Code removing the impositions of the flat transient occupancy tax and imposing a tax based on a percentage of gross rents.
- C. On March 9, 2004, City of Mesa voters approved an increase of .5% in the Transient Occupancy Tax. Increasing the percentage rate to 3% effective July 1, 2004.
- D. The CITY and BUREAU agree that the responsibility for creating and promoting a Tourist and Convention Bureau Program in Mesa should be placed in the BUREAU as set forth in this Agreement.

TERMS AND CONDITIONS

In consideration of the mutual promises and agreements contained in this AGREEMENT, the parties agree as follows:

1. Subject to the other provisions of this Agreement, the CITY agrees to make available to the BUREAU such proceeds from the transient occupancy tax as are approved by the City Council in the final City budget. The BUREAU agrees to utilize said funds solely for Convention & Visitors Bureau purposes. The proceeds appropriated by the City Council for the Tourist and Convention Bureau Program contemplated by this Agreement will be distributed by the CITY to the BUREAU in twelve monthly payments after the CITY has first deducted from the proceeds an administrative charge reflecting the expenses incurred by the CITY in administering this Agreement and collecting the transient occupancy tax monthly. For FY 2009/10, the administrative charge will total \$25,000. Beginning on July 1, 2009 the monthly payments equal to the amount collected by the City in the previous month less the

agreed upon administration charge will be paid to the BUREAU no later than the 10th day of each month. In addition, the BUREAU will appropriate \$100,000 of the bed tax funds for FY 2009/10 for Spring Training Facility Improvement costs and another \$200,000 for capital needs at the Mesa Convention Center. The transient occupancy tax transfer shall be further reduced by such amounts that: (1) the city is obligated to pay, or set aside for possible future payment, pursuant to the terms of development agreements that have such obligations, and (ii) the Mesa City Council determines is appropriate, in its discretion, to retain. The City agrees to discuss and receive input from the CVB prior to obligating funds. The Bureau acknowledges and agrees that the transfer of funds is not a guaranteed specific sum and is subject to deductions as described herein.

A payment schedule is attached as addendum A and incorporated herein.

2. The BUREAU shall be responsible for the following activities:

- (a) Adoption and submission to the CITY of a proposed annual budget for Convention & Visitors Bureau Program. The BUREAU agrees that the Mayor and City Council will be responsible for final approval of the budget and the Mayor and City Council reserve full authority to make such changes in the proposed budget as they deem appropriate.
- (b) The BUREAU shall submit a financial summary statement to the CITY on an annual basis. The BUREAU agrees to use sound and prudent financial business practices, follow generally accepted accounting principles, and keep complete and accurate records of all monies received and disbursed under this Agreement.
- (c) The BUREAU will submit reports to the Mayor and City Council twice each year or as requested through the City Manager that detail the expenditure of funds conveyed under this Agreement, and the results anticipated and achieved through the expenditures.
- (d) The BUREAU will administer the day-to-day operation of the Convention & Visitors Bureau Program.

3. This Agreement shall become effective on the 1st day of July 2009 and shall terminate on the 30th day of June 2010.

(a) On or before June 1, 2010, the CITY and the BUREAU shall meet to discuss whether this Agreement should be renewed.

4. The BUREAU may not assign or transfer its rights or obligations under this Agreement.

5. The BUREAU shall indemnify and hold harmless the CITY its officials, agents, and employees from any and all loss, damage, liability, cost, charge or expense, whether direct or indirect, including reasonable attorney's fees, arising out of any intentional or negligent act of the BUREAU, its agents, employees, subcontractors or persons employed by them, in establishing and implementing the Tourist and Convention Bureau Program described herein.

6. The BUREAU shall arrange to be audited on an annual basis by an independent certified public accounting firm. A copy of the bureau's audited financial statements and the audit report shall be provided to the city.

7. The BUREAU shall adopt a conflict of interest policy that any director, officer, employee of the BUREAU, or their relatives having a substantial interest in any BUREAU transaction may not be involved or participate in the discussion or decision of whether the bureau should enter into the transaction.

(a) "Substantial Interest" shall mean as defined in A.R.S. § 38-502(11)

(b) "Relative" shall mean as defined in A.R.S. § 38-502(9)

8. The bureau shall maintain officers and directors professional liability insurance coverage for errors and omissions with an unimpaired limit of not less than \$1,000,000 for each claim, and \$2,000,000 aggregate.

9. This agreement is subject to the provisions of A.R.S. § 38-511 and the city may terminate this agreement if any person significantly involved in negotiating, drafting, securing, or obtaining this agreement for or on behalf of the city becomes an employee in any capacity of any other party to this agreement

10. This agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first hereinabove written.

CITY OF MESA, a municipal corporation

By _____

Christopher J. Brady
City Manager

ATTEST:

MESA CONVENTION & VISITORS BUREAU,
An Arizona nonprofit corporation

By _____

ADDENDUM A
TO CONVENTION & VISITORS BUREAU AGREEMENT
2009/2010

The commitment for the Cubs stadium assessment for 2009/2010 fiscal years is \$100,000. The commitment for capital needs at the Mesa Convention Center for fiscal year 2009/2010 is \$200,000. The City collection fee for 2009/2010 is \$25,000 for an annual total of \$325,000. The City will retain payments of \$27,083 per month. The Bureau will continue to fund other civic/tourism activities in compliance with a 15% of revenue goal. Decisions on funding priorities for civic/tourism activities will be made in consultation with and approved by the City of Mesa.