

AGREEMENT AMONG THE CITY OF MOBILE, THE MOBILE AREA LODGING CORPORATION, AND THE MOBILE CONVENTION & VISITORS CORPORATION

This Agreement is entered into by and between the CITY OF MOBILE, a municipal corporation (hereinafter "City"), the MOBILE AREA LODGING CORPORATION, an Alabama nonprofit corporation (hereinafter "MALC"), and the MOBILE CONVENTION & VISITORS CORPORATION, an Alabama nonprofit corporation (hereinafter "MCVC"), relative to the Mobile Tourism Improvement District (hereinafter "MTID").

RECITALS

- A. The MTID was formed pursuant to the Self-Help Business Improvement Districts in Class 2 Municipalities Law, Ala. Code § 11-54B-40 et seq. (the "Law").
- B. In July, 2019, MALC prepared and released the District Plan for the MTID, dated July 12, 2019 (the "District Plan"), which proposed the establishment of a tourism improvement district for the purpose of providing sales and marketing and capital improvements programs for assessed lodging businesses in the City. The District Plan states that MALC, a nonprofit corporation, is designated by ordinance of the City to manage the day-to-day operations of the MTID. The board of directors of MALC is responsible for setting the goals, policies, procedures, and annual budget for the MTID and overseeing their fulfillment. The District Plan is incorporated into this Agreement by reference.
- C. MALC submitted a petition to the City Council signed by property owners representing sixty percent (60%) of the assessed rooms within the MTID and the property owners of at least fifty percent (50%) of the parcels of real property located within the MTID and requested that the City Council initiate proceedings to establish the MTID pursuant to the Law.
- D. On May 19, 2020 the City Council adopted Ordinance 50-014 which established the MTID, pursuant to Section 11-54B-46 of the Law, with an effective date of July 1, 2020. Ordinance 50-014 designated MALC as the MTID's district management corporation authorized to provide administrative and other services to the MTID and authorized the execution of this Agreement.
- E. MALC represents all business owners included within the MTID and possesses the capacity, in conjunction with MCVC, to provide the MTID programs as described in the District Plan.
- F. The City, MALC, and MCVC desire to enter into this Agreement to set forth the roles and responsibilities of the parties with respect to providing MTID programs and administration.
- G. The City affirms that the level of services presently being provided by the City to the businesses within the MTID shall continue at the same level after establishment of the MTID, as contemplated in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. **DEFINITIONS.** Certain terms are defined in the heading and recitals to this Agreement. In addition to those terms, the following definitions shall apply:
 - A. **MTID Programs.** The programs to be provided by MALC and MCVC within the MTID include sales and marketing, capital improvements, and related administration, as described in greater detail within the District Plan.
- 2. **MALC OBLIGATIONS.** MALC's obligations under this Agreement shall be as follows:
 - A. **MTID Programs.** MALC shall oversee the implementation of MTID programs in the manner and of the quality described in the District Plan and annual reports, during the following time periods:

Year 1 (partial)	July 1, 2020	through	September 30, 2020
Year 2	October 1, 2020	through	September 30, 2021
Year 3	October 1, 2021	through	September 30, 2022
Year 4	October 1, 2022	through	September 30, 2023
Year 5	October 1, 2023	through	September 30, 2024
Year 6 (partial)	October 1, 2024	through	May 31, 2025

MALC shall be fully responsible for overseeing, developing, and directing the MTID programs as described in the District Plan. MCVV shall not oversee, develop, or direct any MTID programs.

- B. Annual Budgets. The officers of MALC shall submit a detailed annual budget for approval by its Board of Directors including proposed expenditures and proposed sources of funding, which may include voluntary donations. The budget shall explain how it contributes to goals and objectives for the MTID.

The budget shall be introduced, approved, amended, and adopted by resolution passed by not less than a majority of the full membership of the Board of Directors. The procedure for passing a budget shall be as follows:

- i. Introduction and preliminary approval of the budget.
- ii. Public advertising of the budget.
- iii. Public hearing relating to the budget.
- iv. Amendments to the budget and public hearings relating to those amendments, if required.
- v. Adoption of the budget.
- vi. No budget shall be adopted until a public hearing has been held thereon and all persons having an interest therein have been given an opportunity to present objections.

The Board of Directors may amend the budget during or after the public hearing.

No amendment to the budget by the Board of Directors shall be effective until all persons having an interest therein have been granted a public hearing thereon, if the amendment does or provides for any of the following:

- i. Adds a new item to in an amount in excess of ten percent (10%) of the total amount as stated in the approved budget.
- ii. Increases or decreases any item within the budget by more than ten percent (10%) of the amount stated in the approved budget for the item.
- iii. Increases the amount needed to be raised by special assessment by more than ten percent (10%) of the total special assessment revenues stated in the approved budget.

- C. Annual Reports. For each fiscal year of MTID operations, MALC shall, within 90 days after the close of each fiscal year, submit to the City Clerk an annual report that includes, at a minimum:

- i. A financial statement for the preceding year, including a balance sheet, statement of income and loss, and such other information as is reasonably necessary to reflect MALC's actual performance, certified by the MALC Treasurer; and
- ii. The budget for the current fiscal year.

- D. Annual Audits. For each fiscal year of MTID operations, MALC shall, within 90 days after the close of each fiscal year, submit to the City Clerk an annual audit of its books, accounts, and financial transactions. The annual audit shall be conducted by a certified public accountant. Within four (4) months after the close of the fiscal year, a certified duplicate copy of the audit shall be filed with the Mayor and Finance Director of the City.
- E. Subcontracts. MALC and MCVC shall let and administer all subcontracts necessary for providing the MTID programs. MALC assumes responsibility for the contracting of, and payment for, all support services as may be required. MALC shall comply with all applicable State and City laws and regulations.
- F. Other Programs. MALC will continue to look for ways to improve the MTID and enhance business opportunities for all MTID assessed property owners.
- G. Indemnification and Hold Harmless. Except for the active negligence or willful misconduct of the City, MALC undertakes and agrees to defend, indemnify and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest, from and against all suits and causes of action, claims, losses, demands, and expenses, included but not limited to attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person including MALC's employees or agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this agreement by MALC or its subcontractors.
- H. Insurance Requirements. The insurance requirements will be provided in Exhibit "A", attached hereto and made a part hereof.
- I. MALC Status. MALC shall perform its obligations under this Agreement and shall be responsible for any federal, state, and local taxes and fees applicable to payments made to MALC hereunder. Acting in the capacity of an independent contractor, the MALC's employees and subcontractors are not City employees and are not entitled to or eligible for any benefits provided by the City.
- J. Assignment. MALC covenants and agrees that it will not assign or transfer its rights or obligations under this Agreement, either in whole or part, without first obtaining the written consent of the City; such consent must be granted or denied at the sole discretion of the City. Any attempt by the MALC to assign or transfer its rights or obligations without such written consent shall be null and void.
- K. Assets of MALC. Pursuant to State law, in the event of MALC's dissolution, or upon any withdrawal of its designation as the MTID's district management corporation, all interest in and title to funds held by or for MALC, and all property of MALC shall be transferred and assigned to a successor MTID district management corporation, or if no successor MTID district management corporation exists, to the general fund of the City for use in funding the MTID programs as the MALC Board of Directors shall direct and designate.
- L. MALC Not Agent of the City. Neither MALC nor any of MALC's employees, agents, representatives or subcontractors are or shall be considered to be agents of the City in connection with the performance of MALC's obligations under this Agreement, or for any other purpose.
- M. MALC Subject to Laws. MALC understands and acknowledges that it will be subject to all State and City laws and regulations and hereby agrees to comply with all such laws and regulations.
- N. Nondiscrimination. In the performance of this Agreement, MALC shall not discriminate in its employment practices against any employee or applicant for employment because of such person's

race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition.

3. MCVV OBLIGATIONS.

- A. MTID Programs. MCVV shall administer MTID sales, marketing and promotional items as specified by MALC, subject to the oversight, development, and direction of MALC, in the manner and of the quality described in the MTID's District Plan and annual reports, during the following time periods:

Year 1 (partial)	July 1, 2020	through	September 30, 2020
Year 2	October 1, 2020	through	September 30, 2021
Year 3	October 1, 2021	through	September 30, 2022
Year 4	October 1, 2022	through	September 30, 2023
Year 5	October 1, 2023	through	September 30, 2024
Year 6 (partial)	October 1, 2024	through	May 31, 2025

MCVV shall be fully responsible for implementing the District programs, subject to the oversight, development, and directions of MALC, as described in the District Plan.

- B. Indemnification and Hold Harmless. MCVV undertakes and agrees to defend, indemnify and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest, from and against all suits and causes of action, claims, losses, demands, and expenses, included but not limited to attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person including MCVV's employees or agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance by the MCVV or its subcontractors of the MCVV's obligations under this agreement. Nothing herein shall cause MCVV to be responsible or liable for any action, claims, losses, demands and expenses arising out of any action or inaction by or on behalf of the City or MALC.
- C. Insurance Requirements. The insurance requirements will be provided in Exhibit "B", attached hereto and made a part hereof.
- D. MCVV Status. MCVV shall perform its obligations under this Agreement and shall be responsible for any federal, state, and local taxes and fees applicable to payments made to MCVV hereunder. Acting in the capacity of an independent contractor, MCVV's employees and subcontractors are not City employees and are not entitled to or eligible for any benefits provided by the City.
- E. Assignment. MCVV covenants and agrees that it will not assign or transfer its rights or obligations under this Agreement, either in whole or part, without first obtaining the written consent of the City and MALC; such consent must be granted or denied at the sole discretion of the City and MALC. Any attempt by MCVV to assign or transfer its rights or obligations without such written consents shall be null and void.
- F. MCVV Not Agent of the City. Neither MCVV nor any of MCVV's employees, agents, representatives or subcontractors are or shall be considered to be agents of the City in connection with the performance of the MCVV's obligations under this Agreement, or for any other purpose.
- G. MCVV Subject to Laws. MCVV understands and acknowledges that it will be subject to all State and City laws and regulations and hereby agrees to comply with all such laws and regulations.
- H. Nondiscrimination. In the performance of this Agreement, MCVV shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition.

4. CITY OBLIGATIONS. The City's obligations under this agreement shall be as follows:
- A. MTID Administration. This Agreement shall be administered on behalf of the City by the City Clerk.
 - B. Collection and Disbursements. The City's Revenue Department shall effect the timely collection of the assessment; coordinate the collection of the assessment; provide general assistance, clarification, or information to MALC, the assessed property owners and the public at large; and, direct the disbursement of assessment funds to be made to MALC.
 - C. Disbursements to MALC. The MTID assessments will be collected by the City's Revenue Department. With the exception of the City Fee of one percent (1%) of the amount of collected assessments provided for in the District Plan, and the MTID's pro rata share of any delinquent assessment collection costs, the City shall disburse to MALC the actual assessment revenue collected. Within thirty (30) days of receipt of assessment funds collected, the City shall forward the net amount of collected assessment funds to MALC.
 - D. Continuation of City Services. The parties agree that the City's services to the District are comprised of funding for MCVC. The City shall continue to provide funding for MCVC at verifiable "baseline" levels. The baseline level of funding provided by the City to MCVC is (i) for the fiscal year ending September 30, 2020, the sum of not less than \$2,650,000, and (ii) for fiscal years ending September 30, 2021 through 2025, the greater of (x) \$2,650,000 or (y) 33.5% of receipts for the preceding fiscal year from the City's 8% lodging tax.

GENERAL PROVISIONS

- A. General Fund Not Liable. Neither the General Fund of the City nor any other fund or monies of the City, except for the actual MTID assessment revenue received, shall be liable for payment of any obligations arising from the Agreement. Said obligations are not debts of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon its income, receipt or revenues. This Agreement embodies all of MALC reimbursement rights and no further note or other document shall be required to be executed by the City.
- B. Notices. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

City: Lisa Lambert
City Clerk
9th Floor Government Plaza – South Tower
PO-Box 1827
Mobile, AL 36633-1827
(251) 208-7576

MALC: Kent Blackinton
Chair of the Board
Mobile Area Lodging Corporation
64 South Water Street
Mobile, AL 36602
(251) 379-1901

MCVC: David Clark
President & CEO

Mobile Convention & Visitors Corporation
1 South Water Street
Mobile, AL 36602
(251) 208-2004


Any party may change that party's address for these purposes by giving written notice of the change to the other parties in the manner provided in this section. If sent by mail, any notice or other communication shall be effective 48 hours after it has been deposited in the United States mail, with postage prepaid, and addressed as set forth above.

- C. **Term, Termination and Amendments.** The term of this Agreement shall be from the date of execution first noted through May 31, 2025. A failure to object to a breach of this Agreement shall not constitute an amendment thereof, nor shall it waive any future breach of this Agreement.
- D. **Attorneys Fees.** If the services of any attorney are required by any party to secure the performance of this Agreement, or otherwise upon the breach or default of any party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and other expenses, in addition to any other relief to which such party may be entitled. It is understood that for purposes of calculating reasonable attorney fees for the City, that the City Attorney's billing rates shall be calculated at the prevailing rate.
- E. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of Alabama.
- F. **Waiver.** The waiver by any party to this Agreement of breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- G. **Entire Agreement.** This document, including all Exhibits, contains the entire Agreement between the parties and supercedes whatever oral or written understanding they may have had prior to the execution of this Agreement.
- H. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- I. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original document.


IN WITNESS WHEREOF, this Agreement is executed by the CITY OF MOBILE, the MOBILE AREA LODGING CORPORATION, and the MOBILE CONVENTION & VISITORS CORPORATION. The City Clerk of the City of Mobile, the Chair of the Board of the Mobile Area Lodging Corporation, and the President & CEO of the Mobile Convention & Visitors Bureau declare that they are authorized to execute this Agreement on behalf of the parties to the Agreement.

CITY

Approved as to Form and Legality



Ricardo Woods, City Attorney

6-26-20
Date


Sandy Stimpson, Mayor

6-29-20
Date

ATTESTATION


~~Lisa Lambert, City Clerk~~
Mary Ann Merchant, Asst. City Clerk

Agreement Number


50-014
Council File Number

MOBILE AREA LODGING CORPORATION


Kent Blackinton, Chair of the Board

6/12/2020
Date

MOBILE CONVENTION & VISITORS CORPORATION


David Clark, President & CEO

6/12/2020
Date