



Bylaws and Contracts

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**RESTATED BYLAWS OF THE
ASPEN CHAMBER RESORT ASSOCIATION, Inc.**

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**RESTATED BYLAWS OF THE
ASPEN CHAMBER RESORT ASSOCIATION, Inc.**

**ARTICLE I
Offices and Purposes**

Section 1. BUSINESS OFFICES. The principal office of the corporation in the State of Colorado shall be located in the County of Pitkin, Aspen, Colorado. The corporation may have such other offices, either within or without the State of Colorado, as the Board of Directors may determine or as the affairs of the corporation may require from time to time.

Section 2. REGISTERED OFFICE. The corporation shall have the continuously maintain in the State of Colorado a registered office and registered agent whose office is identical with such registered offices as required by the Colorado Nonprofit Corporation Act⁵. The registered office may be, but need not be, identical with the principal office in the State of Colorado and the address of the registered office may be changed from time to time by the Board of Directors.

Section 3. SEAL. The corporate seal shall have inscribed therein the name of the corporation and the words "Seal" and "Colorado". Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 4. PURPOSES. The purposes shall be those identified in the articles of incorporation.

ARTICLE II
Membership and Definitions

Section 1. CLASSES OF MEMBERS. Membership in the Association shall consist of the following classes of membership:

Lodging Management
Single Ownership Lodging
Ski Operation
Local Government
Commercial Classes as Follows:

Professional
Service/Wholesale/Other
Retail
Restaurant
Financial
Nonprofit
Associate Members *Rev'd 4/9/08*

Section 2. DEFINITIONS.

a. Aspen Resort Area shall refer to the community incorporated by the City of Aspen. The area shall also include the Roaring Fork Valley (Aspen to Glenwood Springs.)

Rev'd 4/9/08

b. Lodging Management Site. Any condominium, as defined by the applicable Colorado condominium and/or common ownership acts, and any house, duplex or townhouse that is rented is a tourist accommodation for more than 30 days per year, shall be considered a lodging management site for the purposes of these Bylaws.

Any time-share/fractional unit, as defined by the applicable Colorado condominium, common ownership, and/or timeshare/fractional acts, held in ownership pursuant to a timesharing/fractional agreement shall be treated as a single lodging management site as defined above, that is rented as a tourist accommodation for more than 30 days per year shall be considered a single-ownership lodging site for the purposes of these Bylaws.

Rev'd 4/9/08

c. Single-Ownership Lodging Site. Any lodge, hotel, motel or other real property functioning in a manner similar to that of a lodge, hotel or motel, except lodging management sites as defined above, that is rented as a tourist accommodation for more than 30 days per year shall be considered a single-ownership lodging site for the purposes of these Bylaws.

Rev'd 4/9/08

d. Commercial Site shall mean any site that is used for the sale of retail items, food or beverages to the general public, for the sale of wholesale items, and for the sale or dispensing of services, including professional, trade, contracting, banking, property management and other services.

e. Site shall mean each separately owned or occupied parcel or real property within the resort area including each condominium unit, as that term is defined by the applicable Colorado condominium and/or common ownership acts, which is owned, held or used for in connection with lodging, residential, business, or commercial purposes.

f. Lodging Management Membership shall mean membership by virtue of current payment through membership fee based on short-term rental of condominium lodging management sites, houses, duplexes, or townhouses. This class shall include property Management Company, condominium association, realty Rental Company, or similar business and shall not include individual property owners or entities that managed one single family home, second home or condominium on behalf of them or another. There shall be one membership for each commercial site in which lodging management is the primary business.

Rev'd 6/13/91

g. Single-Ownership Lodging Membership shall mean membership by virtue of current payment through membership fee based on ownership and short-term rental of a single-ownership lodging site, and there shall be one membership for each single-ownership lodging site, as defined in these Bylaws.

h. Retail Membership shall mean membership by virtue of current payment through membership fee based on occupation of a commercial site or a business in the Aspen Resort Area involving only the following subgroups; retailing, wholesaling, and other related services, and there shall be one membership for each commercial site in which retail and wholesale sales are the primary business.

Rev'd 6/13/91

i. Professional Membership shall mean membership by virtue of current payment through membership fee based on occupation of a site or the operation of a business involving professional services or practice in the Aspen Chamber Resort Area. This membership shall include medical doctors, chiropractors, dentists, lawyers, engineers, surveyors, architects, and the like, and there shall be one membership for each commercial site in which professional service is the primary business.

Rev'd 6/28/89

j. Ski Operation Membership shall mean membership by virtue of current payment of fees by any skiing company operating within the Aspen Resort community. To qualify for a Ski Operation membership, a firm or company must operate a ski operation site within a ten mile radius of the incorporated City of Aspen and must sell 100,000 or more lift tickets each year.

Rev'd 6/28/89
Rev'd 4/9/08

k. Local Government Memberships shall mean membership by virtue of payment of fees and in-kind services by Pitkin County or the City of Aspen. There shall be one membership each for Pitkin County and the City of Aspen should they otherwise qualify in accordance with these Bylaws.

l. Service Membership shall mean membership by virtue of current payment of membership fees based on ownership of a service company including beauticians, interior decorators, advertising agencies, cleaning companies, construction companies, auto services, computer services, event services, health care services, insurance companies, and other such firms that provide a service for a fee and there shall be one membership for each commercial site in which such service activities are the primary business.

Rev'd 4/9/08

m. Financial Membership shall mean membership by virtue of current payment of membership fees based on ownership or occupation of a site or the operation of a business providing financial services for a fee, including banks, savings and loans, mortgage companies, and the like, and there shall be one such membership for each commercial site in which such financial services are the primary business.

n. Nonprofit Membership shall mean membership by virtue of current payment of membership fees or other consideration (as determined by the Board of Directors of the Aspen Chamber Resort Association) by any legally incorporated nonprofit or not-for-profit corporation, and there shall be one membership for each such nonprofit or not-for-profit entity.

o. Associate Membership shall mean membership by virtue of current payment of membership fees by entities located geographically outside the Aspen Resort Area as specified in Article II, Section 2, para. A of these Bylaws, or any entity which does not meet the requirements of any other class of membership as determined by the Aspen Resort Association Board of Directors. Associate Plus Membership designation shall mean an Associate Member whose property lies outside the Aspen Chamber Resort Association area.

Rev'd 6/28/89
Rev'd 4/9/08

p. Ordinary Action of the Association shall mean any action of the Association which is not a special action defined herein. Ordinary actions by the Association shall be determined by a majority vote of the membership, in attendance in person or by proxy at any duly constituted meeting of the membership or by ballot voting as provided for in these by-laws and pursuant to the Colorado Revised Nonprofit Corporation Act..

Rev'd 4/9/08

q. Special Action of the Association shall mean any action of the Association designated as such in the Articles of Incorporation or these Bylaws. Such action shall require approval by two-thirds (2/3) of the membership in attendance and proxies present at any duly constituted meeting of the membership, as further specified in Article III of these Bylaws.

r. Proxies. Proxies executed by any members shall be recognized at any Annual, additional or special meeting called by the Association. Such proxies must be executed by the member of record as of the record date set by the Board of Directors pursuant to Article III, Section 4, of these Bylaws and must be recorded by the Association 24 hours before the time of the meeting notice.

s. Real Estate Membership shall mean membership by virtue of current payment through membership fee based on occupation of as item or the operation of a business involved principally in the sale of real estate or leasing of commercial space not including real estate management and short term rental sales operations as described in paragraph f, Lodging Management Membership. There shall be one membership for each commercial site in which real estate services are the primary business.

Rev'd 6/31/91

t. Restaurant Membership shall mean membership by virtue of current payment through membership fee by any restaurant business organization and there shall be one membership for each commercial site in which restaurant services are the primary business.

Rev'd 6/13/91

Section 3. TERMINATION OF MEMBERSHIP.

a. The Board of Directors, by affirmative vote of two-thirds (2/3) of all the members of the Board, may suspend or expel a member for cause after an appropriate hearing, and may, by a majority vote of those present at any regularly scheduled meeting as specified in Article V, 3, terminate the membership of any member who becomes ineligible for membership or suspend or expel any member who shall be in default in the payment of dues for the period of two months from the beginning of the fiscal year or the period for which such dues become payable.

b. Appeal: Any member terminated once the provisions of this section may appeal the action of the Board by requesting a Special Action at the next meeting of the membership.

Section 4. RESIGNATION. Any member may resign by filing a written resignation with the secretary, but such resignation shall not relieve the member so resigned of the obligation to pay any dues, assessments, or theory charges theretofore accrued and unpaid.

Section 5. REINSTATEMENT.

a. Upon written request signed by a former member and filed with the Secretary, the Board of Directors may, by the affirmative vote of two-thirds (2/3) of the members of the Board, reinstate such former member to membership upon such terms as the Board of Directors may deem appropriate.

b. Appeal. In the event that reinstatement is disallowed by the Board of Directors, a former member may request reinstatement by requesting a special action as specified in Article II, of 2r of these Bylaws at the next meeting of the membership. The result of such special action shall be binding upon the Board.

ARTICLE III **Meetings of Membership**

Section 1. ANNUAL MEETING. An annual meeting of the members shall be held in or around Aspen Colorado, and shall be held within the second quarter of the new fiscal year, with the time and place to be designated by the Board of Directors. Notice of the annual meeting shall be provided as set forth in Section 5, below. At the annual meeting, reports of the affairs of the corporation shall be considered, and any other business may be transacted that is within the powers of the members. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation, except that each annual meeting shall take place no later than 15 months after the preceding annual meeting or the incorporation of the Association.

Rev'd 1/17/90

Rev'd 4/9/08

Section 2. ADDITIONAL MEETINGS. The Board of Directors may provide for additional membership meetings, whenever it may be considered necessary or desirable, and the time and place to be designated by the Board of Directors. Notice shall be provided as outlined in Section 5, below.

Section 3. GENERAL AND SPECIAL MEETINGS. General and special business meetings of the membership may be held at such other times as the Chair of the Board of Directors may determine, or a special meeting shall be called upon the request of not less 10% of the voting membership. Notice of such meetings shall be provided as outlined in Section 5, below

Section 4. RECORD DATE. The Board of Directors shall set a record date for the purpose of determining voting rights of the membership at the Annual Meeting and or any additional or Special Meeting or special questions to come before the membership as is appropriate from time to time. The record date shall be set no less than ten (10) nor more than sixty (60) days before the date of the meeting in question.

Section 5. NOTICE OF MEETINGS. Notices stating the place, day and hour of the Annual Meeting, any additional meetings and/or special meetings, and in the case of additional and special meetings, the purpose for the meeting, shall be sent to the membership along with any information specified in the Articles of Incorporation or Bylaws in relation to the Annual Meeting, additional meeting or any special meeting by mail or personal delivery to the latest address of record for each. Notice of meetings or questions shall be mailed no less than ten (10) days previous to the meeting or the date of any questions, except that notice of the Annual Meeting shall be mailed not more than 30 nor less than 15 days previous to the date of the annual meeting. Written waiver of notices may be given by any member in attendance or not in attendance at a particular meeting by signed notice to the Secretary of the Association. If mailed, any notices shall be deemed delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the corporation with postage thereon paid. If delivered electronically, notices shall be deemed delivered when sent to the member's email address on record for the member.

Rev'd 4/9/08

Section 6. VOTING. There shall be one vote for each membership held, as defined by the Articles of incorporation and these Bylaws. Any voting member whose dues are in arrears for a period of more than sixty (60) days shall not be eligible to vote.

Section 7. A member entitled to vote may vote or otherwise act in person or by proxy. All proxies must be received by ACRA at least twenty-four hours prior to any such action. Ballot voting by mail or electronically shall be allowed as provided for in these by-laws and pursuant to the Colorado Revised Nonprofit Corporation Act. Approval by written ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. No proxies shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy or by law.

Rev'd 4/9/08

Section 8. QUORUM. Quorum shall be the membership in attendance or by proxies present at any meeting and shall not be less than 10 percent of the total membership in the Association.

ARTICLE IV
Board of Directors

Section 1. GENERAL POWERS. The affairs of the corporation shall be managed by its board of Directors.

Section 2. NUMBER. The authorized number of elected directors of the corporation shall be not less than eight (8) or more than fourteen (14). The Board shall have the power to modify the numbers and composition of its membership within these numerical guidelines. The authorized number of appointed directors shall be as determined annually by resolution of the Board elected directors. The number of appointed directors shall not exceed the number of elected directors.

Section 3. COMPOSITION OF BOARD OF DIRECTORS: The Board of Directors shall be composed, unless modified in accordance with the Articles and Bylaws by the Board of Directors in accordance with these bylaws, of nineteen (22) voting members, as follows:

Elected: Twelve seats, one or two or three from each of the following membership categories classes:

- 1 Real Estate
- 1 Nonprofit
- 1 Restaurant
- 2 Retail
- 3 Service
- 2 Lodging
- 1 Professional
- 1 Finance

Appointed: Ten seats as follows:

- 2 Ski-area operation
- 1 City Council representative
- 1 Aspen Music Festival
- 1 Aspen Valley Hospital
- 1 County Commissioner representative
- 1 At Large
- 1 At Large
- 1 At Large
- 1 Chair Emeritus

In addition, the President and Chief Executive Officer of ACRA shall be a non-voting, ex officio member of the Board. Any other organization may upon invitation of the Chair, be a non-voting, ex-officio member of the ACRA Board.

Rev'd 4/22/92 and 7/00

Rev'd 4/9/08

Section 4. TERM OF ELECTED DIRECTORS. Each elected director shall hold office for a term of two (2) years subject to the right of the incumbent Board of Directors, by resolution, to prescribe a term of one (1) year for one or more of the directors to be elected in any election in order to preserve staggered elections of approximately one-half of the entire board each year. Directors shall take office at the next meeting of the board of directors after their election.

Rev'd 1/17/90 and 7/00

Section 5. NOMINATION OF DIRECTORS TO BE ELECTED. At least forty-five days prior to any election, the Board shall appoint a nominating committee composed of three members of the Board of Directors and four members not currently serving on the Board. The responsibilities of the Nominating Committee shall be:

a. To solicit qualified candidates for nomination. To qualify, a candidate must be an active, current member (or the designated agent of that member) of the membership class which he or she will represent.

b. To prepare a slate of candidates. Any candidate who submits a nominating petition containing the signature of not less than 10% of the applicable class of membership must be included on the slate of candidates.

c. To give public notice of the fact of an election at least thirty days prior to such election.

d. To conduct the election.

e. To appoint an impartial party to tally the ballots and announce the results to the Board.

Section 6. ELECTION OF DIRECTORS shall be by:

a. Written or electronic ballot, not less than fifteen days prior to the end of the fiscal year, unless a special election is deemed necessary by the Board, as described in par. C, below.

Rev'd 4/9/08

b. Staggered Elections

i. During even-numbered years the following seats shall be elected:

- 1 Lodging Management Seat
- 1 Real Estate
- 1 Service Seat
- 1 Retail
- 1 Finance

Rev'd 4/9/08

ii. During the odd numbered years the following seats shall be elected:

- 1 Professional
- 1 Nonprofit
- 1 Lodging
- 1 Restaurant
- 1 Retail
- 1 Service

*Rev'd 1/17/90
And Rev'd 7/00*

iii. The Board shall have the power to vary from the above in the event resignations and appointment to fill vacant elected seats causes an imbalance in the above schedule, so that a proper balance of new directors and experienced directors may be maintained.

Rev'd 6/13/91

c. Special Elections – Should the Board deem it necessary to add additional Board members and/or change the composition of the Board, a special election may be held at any general, additional, or special meeting held in accordance with these Bylaws.

Section 7. APPOINTMENT OF DIRECTORS.

a. The ski operator of Ajax Mountain Aspen Highlands, Snowmass and Buttermilk Mountain shall have the power to appoint two representatives to the Board of Directors from those in its employ, as set forth in Article II, Section 2 (j).

Rev'd 4/9/08

b. The City Council may select one of its members to be a director of the ACRA board.

c. The Board of County Commissioners may select one of its members to be a director of the ACRA Board.

d. The Aspen Valley Hospital board or staff shall select one of its members/and or staff to be a director of the ACRA Board

Rev'd 4/9/08

e. The Aspen Music Associates board or staff shall select one of its members/and or staff to be a director of the ACRA Board.

Rev'd 4/9/08

f. The Chair Emeritus shall be a voting director after his or her term as Chair, The Chair Emeritus shall serve on the Board for as long as his/her successor Chair serves as Chair.

Rev'd 4/9/80

g. The Chair of the Board of Directors shall appoint three directors on an annual basis to coincide with ACRA's normal election schedule.

Rev'd 4/9/08

Section 8. VACANCY. Any vacancy occurring on the Board of Directors shall be filled by the affirmative vote of a majority of the remaining directors, except for vacancies in the appointed seats for Ski Area Operations, City Council representative, and County Commissioner representative, Aspen Valley Hospital and the Music Associates these vacancies shall be filled by the respective entities involved according to their own procedures. The Board of Directors may also fill any newly established elected seats by appointment until the next regular annual election. A director elected to fill a vacancy shall serve the remainder of the unexpired term of the director he or she replaces.

Rev'd 4/9/08

Section 9. RESIGNATIONS. Any director may resign at any time by mailing or delivering, or by transmitting by electronic means or written notice of his or her resignation to the Chair or the Secretary of the corporation. Any such resignation shall be effective at the time specified therein if so stated in such resignation.

Rev'd 4/9/08

Section 10. REMOVAL. Any elected member of the Board of Directors may be removed by the affirmative vote of two-thirds of the members of the Board, whenever in their judgment of the best interest of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the member so removed.

Section 11. RECALL. Any elected director may be recalled at a duly constituted regular or special meeting of the membership by a two-third vote of the entire eligible membership class (including proxies) which he represents.

Section 12. EX-OFFICIO MEMBERS. The Chair of the Board of Directors, upon the approval of the Board, shall appoint and remove non-voting ex-officio members to the Board of Directors. Any such appointed member shall hold office concurrently with the term of office of the Chair.

Rev'd 4/9/08

Section 13. TERM OF LIMITS FOR DIRECTORS. The three appointed at-large seats may serve no more than three consecutive one year terms. The other appointed seats designated by organization as well as the non voting ex-officios will not have term limits. Any elected board member will also not have term limits. A former director, who has not served for one year, may be elected or appointed again, except the Chair Emeritus, who must similarly step aside for a one year period prior to being eligible to serve again.

Rev'd 4/9/08

ARTICLE V

Duties of the Board of Directors

Section 1. BUDGET. The Board of Directors shall, in prior to the beginning of each fiscal year, propose and tentatively adopt a budget, which shall also include all long-term or continuing commitments of the Aspen Chamber Resort Association made in connection with or contemplated under any previously approved budget. However, the tentative budget for each subsequent fiscal year shall not be finally established until after an opportunity for discussion of such budget and approval by a majority of the members and proxies present at an annual budget meeting to be held during the month of July Board of Directors shall give notice of the time and place of a meeting for review of a tentative budget to all members at least 10 days prior to such meeting. During such 30-day period the Board of Directors shall make copies of the tentative budget available to all interested members at the principal office of the Resort Association. In the event that a Quorum shall not be present at the July budget meeting, the Board of Directors may establish the budget for the coming fiscal year.

Rev'd 6/28/89

Rev'd 4/9/08

Section 2. ADDITIONAL REVENUES. The Board of Directors shall provide for additional means of funding through appropriate actions as may benefit the general funds and overall operations of the Association.

Section 3. REGULAR MEETINGS. The Board of Directors shall meet on the last Tuesday of each consecutive month, or at intervals determined by resolution of the Board of Directors at a time and place designated by the Chair. Regularly scheduled meetings of the Board may be rescheduled by the Chair or Vice Chair by authority of the Chair. Absence from three (3) consecutive meetings by any elected board member without an excuse deemed valid and so recorded by the Board of Directors shall be considered as a resignation, under which circumstances, the Board of Directors will proceed to select a successor to fill such vacancy in accordance with Article IV, Section 8 thereof.

Rev'd 4/9/08

Section 4. SPECIAL MEETINGS. A special meeting of the Board of Directors may be called at any time by the Chair or by three (3) directors, provided that when called other than by the Chair, a call shall be issued to each director stating the purpose of the meeting, not less than forty-eight (48) hours preceding the meetings.

Section 5. QUORUM. At all meetings of the Board of Directors, the majority of the voting directors shall constitute a quorum. In the event that a quorum is not in attendance at any meeting, the meeting shall promptly be adjourned..

Rev'd 4/9/08

Section 6. MANNER OF ACTING. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws. Each voting board member shall be entitled to one vote on each matter submitted to the Board of Directors.

Section 7. COMPENSATION. Directors as such shall not receive any stated salaries for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Boards but nothing herein contained shall be construed to preclude any director from serving the organization in any other capacity and receiving compensation therefore, consistent with the nonprofit status of the organization and in compliance with all rules and regulations of the Internal Revenue Service.

Section 8. ADJOURNMENT. If a quorum exists, adjournment may be accomplished by a majority of those in attendance at the meeting. If a quorum does not exist, a majority of the directors may adjourn the meeting from time to time without further notice other than announcement at a meeting.

Section 9. **INFORMAL ACTION BY DIRECTORS.** Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if consent in writing, or electronic means setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as unanimous vote of the directors.

Rev'd 4/9/08

Section 10. **NOTICE WAIVER.** Five (5) days notice of a Special Meeting shall be given each member orally or in writing. Written or electronic means notice of waiver shall constitute a waiver of notice to such meeting.

Rev'd 4/9/08

ARTICLE VI **Officers**

Section 1. **OFFICERS.** The officers of the corporation shall be a Chair of the Board, one or more vice chairs, a secretary and a treasurer, and such other officers as the Board of Directors shall deem proper. All of these officers shall be selected by the Board of Directors annually at the beginning of the fiscal year.

Rev'd 6/28/89

Section 2. **ELECTION.** The Board of Directors shall choose the officers and may fix, not inconsistent with the Bylaws, the powers and duties of any officer. Each officer so chosen shall hold office for one year or until his or her successor shall be chosen and shall qualify, unless he shall sooner resign or be removed as herein in these Bylaws provided.

Rev'd 6/28/89

Section 3. **AGENTS.** The Board may, except as may otherwise be required by law, authorize any officer or officers, agent or agents in the name of and on behalf of the corporation to sign checks, drafts, or other orders for the payment of money or notes or other evidences of indebtedness, to endorse for deposit, deposit to the credit of this corporation at any bank or trust company or banking institution in which the Association may maintain an account, cash, checks, notes, drafts or other bankable securities or instruments and such authority may be general or confined to specific instances as the board may elect, but unless so authorized by the board, no officer or agent or employee shall have power of authority to bind the corporation by contract or engagement or to pledge its credit or to render it peculiarly liable for any purpose or for any amount.

Section 4. **DUTIES OF THE OFFICERS.** The duties of the officers shall be as follows:

a. Chair of the Board. The Chair of the Board shall be the principal executive officer of the Association. He shall have general control of the affairs and business of the Association. He shall preside at all meetings of the membership and the Board of Directors. He shall appoint chairs and members of all committees and shall be an ex-officio member thereof. He shall sign all deeds, notes, contracts or other instruments which the Board of Directors have authorized to be executed; except where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the corporation. He shall perform all duties incident to the office of Chair of the Board and such other duties as may be prescribed by the Board of Directors from time to time.

b. Vice Chairs. The Vice Chair(s) shall assist the Chair of the Board and shall perform such duties as may be assigned to them by the Chair or by the Board of Directors. In the absence of the Chair of the Board, the Vice Chair, designated by the Board of Directors or (if there be no such designation) designated in writing or electronic means by the Chair, shall have the powers and perform the duties of the Chair. If no such designation shall be made, any Vice Chair may exercise such powers and perform such duties.

Rev'd 4/9/08

c. The Secretary shall:

i. Review and insure the minutes of the proceedings of the members, and Board of Directors are kept up-to-date;

Rev'd 4/9/08

ii. See that all notices are duly given in accordance with the provisions of these Bylaws, the Articles of Incorporation, and as required by law;

iii. Be custodian of the corporate records and of the seal of the Resort Association and affix the seal to all documents when authorized by the Board of Directors.

iv. Keep at its registered office or principal place of business within Colorado a record containing the names and registered addresses of all members;

v. In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the Chair of the Board or by the Board of Directors.

vi. Assistant secretaries, if any, shall have the same duties and powers subject to supervision by the Secretary.

d. Treasurer. The Treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board of Directors. He shall receive and give receipts and quittances for moneys paid in on account of the Association and shall pay out of the funds on hand all bills, payrolls and other duties incident to the office of the Treasurer and , upon request of the Board of Directors, shall make such reports to it as may be required at any time. He shall, if required by the Board of Directors, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board; conditioned upon the faithful performance of his or her duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Board of Directors or the Chair of the Board. The Assistant Treasurers, if any, shall have the same powers and duties subject to the supervision of the Treasurer.

e. President and Chief Executive Officer. The President/CEO shall be the chief paid executive of the Association. He or she shall be retained by and accordingly be responsible to the Board of Directors for the implementation of the policies and goals set by the Board of Directors. The President/CEO shall have the following authority and responsibilities, unless otherwise limited by a majority vote of the entire Board of Directors.

i. Administration and supervision over all Association staff employees;

ii. Administration and supervision over all Association programs;

Rev'd 4/9/08

iii. The responsibility, unless otherwise directed by the Board, to attend all meetings of the Board of Directors and all Association committees.

Section 6. LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND MEMBERS. The directors, officers, employees and members of the Association shall not be liable on any of its obligations, nor shall they be liable to any party for any action or for any failure to act with respect to any matter connected with the Association if the action taken or failure to act was in good faith and without malice. The Association shall indemnify, hold harmless and defend its directors, members, employees, agents and officers from any and all debt, liabilities, chosen in action or claims of any nature resulting from their actions taken in good faith on behalf of the Association or resulting from the acts of the Association.

The Board of Directors, or such individual(s) as may be designated by the Board, shall in its discretion provide for the bonding of the directors, officers, employees and members of the Association in such amounts, types of bonds and circumstances as the Board may deem appropriate from time to time.

Rev'd 6/28/89

Section 7. DIVIDEND PROHIBITED. No dividend shall be paid and no part of the income or profit of this corporation shall be distributed to the corporation's members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes and , upon dissolution or final liquidation, may make distributions to its members as permitted by Colorado law, and no such payments, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

Section 8. LOANS TO DIRECTORS AND OFFICERS PROHIBITED. No loans shall be made by the corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

Rev'd 4/9/08

ARTICLE VII **Committees**

Section 1. MARKETING COMMITTEE. The Board may appoint a marketing committee or committees if it so desires. This committee will make recommendations on scope of marketing work and budget.

*Rev'd 6/28/89 and 7/00
Rev'd 4/9/08*

Section 2. FINANCE COMMITTEE. The Board of Directors, by resolution adopted by a majority of the directors in office at its first regular meeting after the Annual Meeting shall select a Budget Committee. The duties of the Budget Committee shall be to advise the Board on and all matters pertaining to the present and any future budgets for the Association.

Rev'd 4/9/08

Section 3. EXECUTIVE COMMITTEE. The Executive Committee shall be comprised of the Chair, Vice Chairs, Secretary, Treasurer, Assistant Secretaries, and Assistant Treasurers of the Association. It will also compose of the chair emeritus for one year as a non voting member. Its function is to act on the business of the Association when it is impracticable of the entire board to meet.

*Rev' d 7/00
Rev'd 4/9/08*

Section 4. OTHER COMMITTEES. The Board of Directors, by resolution by a majority of the Directors in office, may designate and appoint one or more committees (of directors or members or both) as deemed necessary by the Board of Directors, to perform specific duties as requested by the Board of Directors. The designation and appointment of any such committee shall not operate to relieve the Board of Directors or any individual director, or any individual officer, of the responsibilities imposed upon it or him by law. Such committee shall have a responsibility to no one other than the Board of Directors.

Restated July 20, 2000

Section 5. REMOVAL OF COMMITTEE MEMBERS. Any member of a committee appointed by the Chair of the Board or a majority vote of the Board of Directors, may be removed by the person or persons authorized to appoint such members whenever in their judgment the best interest of the Association shall be served by such removal, except that ski operation members may not be removed without the approval of the appointing ski operation.

Section 6. TERM OF OFFICE. Each member of a committee shall continue as such until the term of office shall expire or until the responsibility of the committee is successfully terminated as determined by the Chair of the Board, or by a majority vote of the Board of Directors.

ARTICLE VIII **Membership Dues**

Section 1. DUES. The fee structure for voting and non-voting memberships shall be determined by the Board of Directors.

Section 2. PAYMENT OF DUES. Dues shall be due and payable upon presentation and shall be considered delinquent sixty (60) days after the date of assessment or according to an agreed upon payment schedule.

Section 3. DATE OF ASSESSMENT. The date of assessment of dues shall be determined by the Board of Directors.

Section 4. FISCAL YEAR. The fiscal year of the Association shall be May 1 to April 30.

Section 5. SPECIAL ASSESSMENT. Any special assessment of fees in addition to the annual payment of dues specified in this Article to be paid by voting or non-voting members may be determined by the Board of Directors only upon majority approval of the membership class(es) upon whom the assessment is to be levied.

Section 6. MEMBERSHIP INITIATION FEE. The Board of Directors, at its discretion, may assess a membership initiation fee against any entity joining the Association after October 15, 1983.

ARTICLE IX
Amendments and Dissolution

Section 1. AMENDMENTS TO THE BYLAWS. Articles II, III, IV, V, VI, VII, VIII and IX concerning membership classes, voting directors, budgetary responsibilities of the directors and miscellaneous provisions shall be amended only the procedures designated for Special Actions in these Bylaws, as defined in Article II, Section 2q.

Otherwise, these Bylaws may be amended, altered or repealed from time to time by action of a two-thirds (2/3) majority vote of the Board of Directors, provided that notice of the proposed change shall have been mailed to each member of the Association not less than ten (10) days prior to such action, or by the affirmative vote of a majority of the meeting of the members if notice of the proposed amendment, alteration or repeal is contained in the notice of such special meeting; provided, however, that no charge of time or place for the election or recall of directors shall be made within thirty days before the day on which such election is to be held, and in case of any change of such time or place, notice thereof shall be given to each member in person or by letter mailed to the last known post office address at least twenty days before the election is held.

Section 2. AMENDMENTS TO THE ARTICLES OF INCORPORATION. Any change to the Articles of Incorporation shall be accomplished by the procedures designated for Special Actions in these Bylaws, as defined in Article II, Section 2®.

Section 3. DISSOLUTION. Dissolution of the Association may only be attained through the passage of a special action as defined in Article II, Section 2r.

WE, THE UNDERSIGNED, being the directors of the ASPEN CHAMBER RESORT ASSOCIATION, INC., do hereby certify that we have, pursuant to Colorado law and to the authority contained in the Articles of Incorporation, adopted the foregoing Bylaws and Restated Bylaws as and for the Bylaws of the corporation.

Dated April 9, 2008.

s/Stan Clauson

s/Shae Singer

s/Rick Jones

s/Cristal Logan

s/Charlie Bantis

s/Susan Hamley

s/David Perry

s/Bill Tomcich

s/Jeanette Darnauer

s/Michael Owsley

s/Helen Klanderud

s/ Patsy Malone

s/John Rigney

s/Paddy Allen

s/Laura Smith

s/Matthew Zubrod

s/Don Sheeley

s/Diana Sirko

s/Casandra Foister

s/ Carol Hood

s/Mick Ireland

s/Warren Klug

s/Jenna Weatherred

s/Cari Britton Kuhlman

s/Dave Ressler

**ASPEN CHAMBER RESORT ASSOCIATION
CERTIFICATE OF BYLAW AMENDMENTS**

Certificate of Debbie Braun, President and Chief Executive Officer

I hereby certify that, pursuant to notice duly sent to all members dated March 26, 2008, a general membership meeting was held on April 9, 2008 at the Aspen Meadows.

The notice for that meeting included a line item for approval by the membership of certain bylaw amendments which include making the bylaws gender-neutral and changing some referenced dates (of our annual meeting, elections, and so on) to more accurately reflect our yearly schedule. Finally, more substantive changes address two "at-large" seats on the Board, which were formerly specifically defined as "land development" and "part-time resident" seats; the addition of term-limit provision changes; and changes in mandated committees. Further, I had submitted a written ballot to the members of the Corporation for approval of those bylaw amendments. The members who returned written ballots voted in favor of the amendments by a vote of 44 to 4.

At the full membership luncheon meeting on April 9, 2008, I first determined that a quorum was present, and called for a vote on the bylaw amendments as noticed. More than 2/3 of the members present in person and entitled to vote, voted in favor of the amendments. The bylaw amendments and restated bylaws, in the form bearing the footer "Restated April 9, 2000", attached hereto, were duly adopted by a unanimous vote of those present.

Dated: April 14, 2008.

Debbie Braun, President and CEO

Debbie Braun verified before me that the above facts are true to the best of her knowledge.

Witness my hand and seal:

My commission expires: _____

Notary Public



**VAIL VALLEY PARTNERSHIP
BY-LAWS**

Adopted: October 4, 2006

Revised: February 20, 2008

Revised: March 14, 2011

I. GENERAL

a. Name and Address

This organization is incorporated under the laws of the State of Colorado and shall be known as the VAIL VALLEY PARTNERSHIP, hereafter referred to as the PARTNERSHIP, and the principal offices shall be located physically at 101 Fawcett Road, Suite 240, Avon, Colorado 81620, with principal mailing address of P.O. Box 1130, Vail, Colorado 81658.

b. Purpose

The PARTNERSHIP is organized for the purpose of enhancing quality of life through responsible leadership and economic empowerment. The PARTNERSHIP Board of Governors is committed to developing a comprehensive and strategic plan that will allow the organization to continually promote its mission while advancing the fundamentals for positive economic growth in the Vail Valley. More specifically, through programs, services and events that will be articulated in an annual program of work, The PARTNERSHIP is organized to serve the business needs of the Vail Valley, Colorado community and its trade area.

c. Limitations of Methods

The PARTNERSHIP shall observe all local, state and federal laws which apply to a nonprofit organization as defined in Section 501 (C) (6) of the Internal Revenue Code.

II. MEMBERSHIP

a. Classes of Members

The PARTNERSHIP shall have five (5) classes of members as follows:

Business Any individual, association, corporation, partnership or other entity (person) shall be eligible to apply for active partnership provided such person or business has a substantial and material business interest in the economic welfare of the Vail Valley or is otherwise eligible under these bylaws. Only active members who pay full dues are eligible to vote.

Lodging Any hotel, motel, lodge, condominium or like property engaged in the business of selling rooms or transient occupancy shall be eligible to apply for active membership provided such person or business has a substantial and material business interest in the economic welfare of the Vail Valley or is otherwise eligible under these bylaws. Only active members who pay full dues are eligible to vote.

Business Group of One Any individual or sole proprietor shall be eligible to apply for active membership provided such person or business has a substantial and material business interest in the economic welfare of the Vail Valley or is otherwise eligible under these bylaws. Only active members who pay full dues are eligible to vote.

Individual/Household Any individual or household shall be eligible to apply for active membership provided such person or household maintains permanent or temporary residency in Eagle County, CO,



and has a substantial and material business interest in the economic welfare of the Vail Valley or is otherwise eligible under these bylaws. Only active members who pay full dues are eligible to vote.

Honorary Distinction in public affairs shall confer eligibility to honorary membership. Honorary members shall have all the privileges of members, with the exception of voting, and shall be exempt from payment of dues. The Board of Governors shall confer or revoke honorary membership by a majority vote.

Membership levels may be enhanced for marketing purposes and/or services rendered by establishing a series of benefits that will correspond to a dues structure and benefit fee that will be approved by the Board of Governors. The terminology used to market, describe or articulate members may include the term “partners” to advance the mission of the organization. A member/partner is NOT a “partner” as defined in the Colorado Uniform Partnership Act. A member/partner shall only have the rights, duties and liabilities as provided in these bylaws and the Articles of Incorporation of the Partnership, and as a “member” of a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act.

b. Election of Members

Applications for membership/partnership shall be in writing, on forms provided for that purpose, and signed by the applicant. The President/CEO shall review all applications and submit them to the Board of Governors at any meeting thereof, or by electronic mail. Any applicant so elected shall become a member/partner upon payment of the regular scheduled investment as set periodically by the Board of Governors.

c. Voting

In the event that a vote by members/partners is directed by the Board of Governors, each active member/partner shall be entitled to a number of ballots determined by the amount of dues paid, according to the following schedule:

Up to \$1,000 = 1 ballot	\$5,001 - \$10,000 = 7 ballots
\$1,001 - \$2,500 = 2 ballots	\$10,001 - \$15,000 = 10 ballots
\$2,501 - \$5,000 = 5 ballots	\$15,001 + = 15 ballots

Number of ballots per individual or business shall not exceed 15 (fifteen) ballots. Individual/Household members shall receive one ballot. Such elections will be deemed valid contingent upon the receipt of 35% of the number of ballots issued.

d. Termination

Any member/partner may resign from The PARTNERSHIP upon written notice to the Board of Governors.

Any member/partner shall be expelled by the Board of Governors by a majority vote for non-payment of dues after sixty (60) days from the date due, unless otherwise extended for good cause.

Any member/partner may be expelled by a two-thirds vote of the Board of Governors, at a regularly scheduled meeting thereof, for conduct unbecoming a member or prejudicial to the aims or repute of The PARTNERSHIP, after notice and opportunity for a hearing are afforded the member/partner complained against.



e. Orientation

At regular intervals, orientation on the purposes and activities of this organization shall be conducted for the following groups: new governors, advisors, committee chairs, committees and new members/partners. A detailed outline for orientation of each of these groups shall be a part of The PARTNERSHIP's procedures manual (or Orientation Handbook.)

f. Dues

Membership/Partnership dues shall be at such rate or rates, schedule or formula as may be from time to time prescribed by the Board of Governors as recommended by the Advisory Council, payable annually according to the member/partner's join date. Any fees or costs associated with membership/partnership must also be prescribed by the Board of Governors upon the recommendation of the Advisory Council and may be subject to the same payment schedule as the member/partner's annual dues.

III. MEETINGS

a. Annual Meeting

The annual meeting of the corporation in compliance with State Law, shall be held during each fiscal year. The time and place shall be fixed by the Board of Governors, and notice thereof to each member/partner. Any proper business within the power of the membership may be transacted at this annual meeting.

b. Additional Meetings

General meetings of The PARTNERSHIP may be called by the Chairperson at any time, or upon petition in writing by any 15% of members/partners in good standing: (a) notice of special meetings shall be mailed to each partner at least thirty (30) days prior to such meetings; (b) Board meetings may be called by the Chairman, President/CEO or by the Board of Governors upon written application of three (3) members of the Board. Notice (including the purpose of the meeting) shall be given to each Governor at least one (1) day prior to said meeting; (c) Committee meetings may be called at any time by the Chairperson, President/CEO, or by the committee's chair.

c. Quorums

At any duly noticed meeting, 33.3% of members/partners shall constitute a quorum at a General Meeting; a simple majority of Governors (50.1%) being present shall constitute a quorum of the Board of Governors Meeting. The chair and one other shall constitute a quorum for a committee meeting.

d. Notices, Agenda, Minutes

Written notice of all PARTNERSHIP meetings must be given as follows: unless otherwise stated: Annual meeting at least thirty (30) days prior; Board of Governors meetings at least three (3) days prior. An advance agenda and minutes must be prepared for Board of Governors and Committee meetings. During any regularly noticed or scheduled meeting of the Board of Governors an item not on the agenda can be raised and voted on as an addition to the agenda by a vote of 2/3 of the Board members present. The detailed outline of presentation for both shall be part of this organization's procedures manual.

IV. BOARD OF GOVERNORS

a. Role of the Board

The Board of Governors is the governing authority for The PARTNERSHIP.

The Board will leverage community support as needed to promote and advance The PARTNERSHIP program of work and mission. Additionally, the Board will work with and supervise the efforts of the



President/CEO to ensure that he/she is carrying out the operational needs of the organization to realize its objectives, supporting the President/CEO and/or organization as needed. The Board has the authority, with a two-thirds majority, to hire and fire the President/CEO.

The Board of Governors will approve all organizational policies and guidelines to ensure adherence to the strategic vision of The PARTNERSHIP.

b. Composition of the Board

The Board of Governors shall be composed of a minimum of 3 and a maximum of 15 members and members will be elected to serve the organization for a two-year term. All Governors will be responsible for an annual financial commitment to be determined by the entire Board of Governors and announced publicly no less than sixty (60) days in advance of the announcement of the slate of proposed Governors for the following year.

The Chairperson of the Advisory Council will serve on the Board of Governors as an ex-officio member with full voting rights.

The membership of the Board of Governors will be staggered to allow for at least 50% of its members to be elected each year. All Governors are eligible to vote once, and voting by proxy is not permitted, however voting by electronic or telephonic means is acceptable provided the Governor has participated in the meeting/discussion via electronic or telephonic means.

All Governors must represent a member/partner-business in good standing with The PARTNERSHIP. Governors must be representative of the breadth of the Vail Valley business community and more than one representative from any one company is not permitted. No elected government official or governmental appointee may serve as a member of the Board of Governors.

c. Selection and Election of Governors

At the first meeting of the fiscal year, the Chairperson shall appoint, with the approval of the Board of Governors, a Nominating Committee comprised of a minimum of 3 members from either the Board of Governors or the Advisory Council. The Chairperson shall designate the Chair of the committee. The Nominating Committee shall be a standing committee available throughout the fiscal year to recommend nominations for Board vacancies, as well as perform duties required to meet the selection of new Governors in adherence to these by-laws.

d. Method of Selection

Prior to September, the Nominating Committee shall present to the Board of Governors a slate of candidates to serve for two-year terms to replace any retiring Governors. Each candidate must be an active member/partner in good standing and must have agreed to accept the terms of the governorship. No Board member who has served for three consecutive terms is eligible for election to a fourth term. A period of one (1) year must elapse before eligibility is restored.

Notice of Nominations: After ratification by the Board of Governors, the President/CEO shall, within 15 business days, notify the full membership by electronic mail of the names of persons nominated as candidates for governors and the right of petition.

Nomination by Petition: Additional names of candidates for governors can be nominated by petition bearing the genuine signatures of at least 75 (or 10% of current membership, whichever is greater) qualified partners of The PARTNERSHIP. Such petition shall be filed with the President/CEO within 10



days after notice has been given of the names of those nominated. The determination of the Nominating Committee as to the legality of the petition(s) shall be final.

Determination: 1) If no petition is filed within the designated period, the nominations shall be closed and the nominated slate of candidates shall be declared elected by the Board of Governors at their next regularly scheduled meeting, or electronic vote. 2) If a legal petition shall present additional candidates, the names of all candidates shall be arranged on one ballot in alphabetical order. Instructions will be to vote for the number of candidate vacancies. The President/CEO shall mail this ballot to all active members/partners within 7 days following the deadline to submit petitions.

The ballots should be marked in accordance with instructions printed on the ballot and returned to The PARTNERSHIP office within (10) days. One member of the Nominating Committee will be designated chairman. The Nominating Committee (Judges) shall have complete supervision of the election, including the auditing of ballots. They shall report the results of the Election to the Board of Governors. The Board of Governors shall declare the candidates with the greatest number of votes elected, by electronic vote, or at the next regularly scheduled meeting.

e. Seating of New Governors

All newly elected governors shall attend the next regular Board meeting following their election. Retiring governors shall continue to serve through December 31st.

f. Vacancies

Governors failing to fulfill the responsibilities of Governorship will be subject to dismissal by the Board of Governors, upon recommendation of the Executive Committee, and a two-thirds majority.

If any member of the Board of Governors voluntarily resigns from the Board at any time throughout the year, the seat may be filled upon the recommendation by the Nominating Committee, and approval of the Board of Governors.

g. Policy

The Board of Governors is responsible for establishing procedure and formulating the policy of the organization. They are also responsible for adopting all policies of the organization. These policies shall be maintained in the Policy Manual, to be reviewed and revised as necessary.

h. Management

The Board of Governors shall employ a President/Chief Executive Office, and Interim President if necessary, and shall fix the salary and other considerations of employment if appropriate.

i. Meetings

A meeting is defined as an official gathering of a quorum of the Board for the purpose of discussing or conducting business of The PARTNERSHIP. The Board of Governors shall meet at a minimum of once per quarter, with additional meetings as required by the Chairperson or President/CEO. Special meetings may be called by the Chairperson, President/CEO or any two (2) members of the Board of Governors.

j. Notice

A minimum of four (4) days notice of all meetings of the Board of Governors shall be given to each member of the respective Board by the President/CEO, Chairman of the Board or by those members calling such meetings. Notice shall be given by US Mail, fax, telephone, or email.



k. Quorum

At all meetings of the Board, a 40% of recognized members will constitute a quorum for the transaction of official business. In absence of a quorum, official business may be conducted via electronic means, such as videoconference, telephone or similar communications equipment provided that all such persons so participating in such a meeting can share information in an equitable manner.

k. Conflict of Interest

Whenever a governor or officer has a financial or personal interest in any matter coming before the Board, the affected person shall a) fully disclose the nature of the interest and b) withdraw from discussion, lobbying, and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be The PARTNERSHIP to do so. The minutes of meetings at which such votes are taken shall record such disclosure, abstention and rationale for approval.

l. Indemnification

The PARTNERSHIP may, by resolution of the Board of Governors, provide for indemnification by The PARTNERSHIP of any and all of its Governors or former Directors/Governors against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them are made parties, or a party, by reason of having been Directors/Governors of The PARTNERSHIP, except in relation to matters as to which such Director/Governor shall be as judges in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of duty and to such matters as shall be settled by agreement predicted on the existence of such liability for negligence or misconduct.

m. Compensation

Governors as such shall not receive any stated salaries for their services, but by resolution of the Board of Governors a fixed sum and expenses of attendance, if any, may be allowed for attendance at such regular or special meetings of the Board; but nothing herein contained shall be construed to preclude any Governor from serving The PARTNERSHIP in any other capacity and receiving compensation thereof.

V. OFFICERS

a. Determination of Officers

The 4Q meeting of the Board of Governors shall be a combined meeting of the incoming and outgoing governors to reorganize for the coming year. At this meeting, the Nominating Committee shall nominate new officers; and the Board shall elect the Chairperson, Vice Chair, Secretary and Treasurer. The Chairperson and Secretary cannot be the same person. Officers will be elected from members of the incoming Board. All officers shall serve for a two (2) year term, or until their successors assume the duties of office. Officers shall be voting members of the Board of Governors.

b. Duties of Officers

Chairperson: The Chairperson shall preside at all meetings of the membership and Board of Governors.

Vice Chair: The Vice Chair shall exercise the powers and authority and perform the duties of the Chairperson in the absence or disability of the Chairperson. The Vice Chair also serves as Chairperson-elect during planning for the subsequent year.

Secretary: (description)



Treasurer: The Treasurer shall be responsible for the safeguarding of all funds received by The PARTNERSHIP and for their proper disbursement. Such funds shall be kept on deposit in financial institutions, or invested in a manner approved by the Board of Governors. The Treasurer shall cause a regular financial report to be made to the Board.

Immediate Past Chair: The most recent Chairperson of the Board will continue to serve the organization as a counselor to the Chairperson and a productive member of the Executive Committee.

President/CEO: The President/CEO shall be the Chief Executive Officer. The President/CEO shall serve as corporate secretary to the Board of Governors, and cause to be prepared notices, agendas, and minutes of meetings of the Board. The President/CEO shall serve as advisor to the Chairperson and Officers on program planning, and shall assemble information and data and cause to be prepared special reports as directed by the Program of The PARTNERSHIP. The President/CEO shall be a non-voting member of the Board of Governors and all committees. With the assistance of the Advisory Council, the President/CEO shall be responsible for administration of the program of work in accordance with the policies and regulations of the Board of Governors.

The President/CEO shall be responsible for hiring, discharging, directing and supervising all employees. With the cooperation of the Chairperson and Officers, the President/CEO shall be responsible for the preparation of an operating budget covering all activities of The PARTNERSHIP, subject to approval of the Board of Governors. The President/CEO shall also be responsible for all expenditures with approved budget allocation.

c. Executive Committee

During intervals between meetings of the Board of Governors, the Executive Committee shall have the authority of the Board in management of The PARTNERSHIP, except that no action shall be taken which is in conflict with the expressed policies of the Board, or these bylaws and which limits unbudgeted expenditures to no more than \$10,000. The Executive Committee shall study and make recommendations to the Board regarding new policies or programs. The Executive Committee shall be accountable to the Board for its actions. It shall be composed of the Chairperson, Vice Chair, Treasurer, and the President/CEO. The Chairperson will serve as chairperson of the Executive Committee. Minutes and actions of the Executive Committee meetings and sessions shall be kept by the Secretary of the Corporation, and shall be reported to the Board of Directors at the next regular meeting.

d. Indemnification

The PARTNERSHIP may by resolution of the Board of Governors, provide for indemnification by The PARTNERSHIP of any and all of its Officers or former officers as spelled out in Article IV, Section I of these by laws.

VI. ADVISORY COUNCIL

a. Role of the Council

The Advisory Council is established to oversee and execute the various programs, services and events of The PARTNERSHIP. Through division, council, committee and task force representation, the Advisory Council works at the pleasure of the President/CEO and the Board of Governors to ensure that the organization's goals and objectives are achieved.

b. Composition of Advisors

Advisors that comprise the Council are Chairpersons, Leads, or designated representatives from The PARTNERSHIP committee structure, special events, or strategic planning initiatives. The Council will



consist of no less than five (5) and no greater than fifteen (15) representatives, however sub-councils may be established by the President/CEO to effectively execute an efficient use of the Council's time and influence on the programs, services and events under its authority.

c. Selection of Advisors

Committees created by the Board of Governors, and those efforts deemed appropriate by the President/CEO will be invited to nominate a representative to serve on the Advisory Council. Nominations must be presented to the Board of Governors at the 4Q Board meeting, for approval. Advisors will serve a (1) one-year term that will coincide with The PARTNERSHIP's fiscal year.

Once approved, the Advisory Council will elect a Chair to serve as an ex-officio member of the Board of Governors will full voting rights.

d. Indemnification

The PARTNERSHIP may by resolution of the Board of Governors, provide for indemnification by The PARTNERSHIP of any and all of its Advisors or former Advisors as spelled out in Article IV, Section I of these by laws.

VII. COMMITTEES AND DIVISIONS

a. Appointment and Authority

The President/CEO shall appoint all committees and committee chairs. The Chairperson or President/CEO may appoint such ad hoc committees and their chairs as deemed necessary to carry out the program of The PARTNERSHIP. Committee appointments shall be at the will and pleasure of the President and shall serve concurrent with The PARTNERSHIP's fiscal year, unless a different term is approved by the Board of Governors.

It shall be the function of committees to execute the program of work, conduct studies and hearings, make recommendations to the Board of Governors, and to carry on such activities as is delegated to them by the President/CEO or the Board.

b. Limitation of Authority

No action by any member, committee, division, bureau, employee, Director or Officer shall be binding upon, or constitute an expression of, the policy of the Chamber until it shall have been approved or ratified by the Board of Governors. Committees shall be discharged by the President/CEO or Chairperson when their work has been completed and their reports accepted, or when, in the opinion of the President/CEO or the Board of Governors, it is deemed wise to discontinue the committees.

c. Testimony

Once committee actions have been approved by the Board of Governors, should the President/CEO deem it necessary to give public testimony, the President/CEO or his/her designee shall present its position to the media, civic and governmental agencies.

d. Divisions

The Board of Governors may, upon recommendation from the President/CEO, create such divisions, bureaus, departments, councils, or subsidiary corporations as it deems advisable to handle the work of The PARTNERSHIP.

The Board shall authorize and define the powers and duties of all divisions, bureaus, departments, councils, and subsidiary corporations. The Board shall annually review and approve all activities and



proposed programs of such divisions, bureaus, departments, councils, or subsidiary corporations, including collection and disbursement of funds.

No action or resolution of any kind shall be taken by divisions, bureaus, departments, councils, or subsidiary corporations having bearing upon or expressive of t The PARTNERSHIP, unless approved by the Board of Governors.

VIII. FINANCIALS

a. Fiscal Year

The fiscal year of the Chamber shall close on December 31.

b. Budget

The President/CEO shall present to the Board of Governors a proposed budget for the coming year in a timely manner to prevent an interruption of the organization's work.

IX. DISSOLUTION

The PARTNERSHIP shall use its funds only to accomplish the objectives and purposes specified in these by-laws, and no part of said funds shall inure, or be distributed to the members/partners of The PARTNERSHIP. On dissolution of The PARTNERSHIP, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific or philanthropic organizations to be selected by the Board of Governors as defined in IRS Section 501 (C) (3).

X. PARLIAMENTARY AUTHORITY

The current edition of Roberts Rules of Order shall be the final source of authority in all questions of parliamentary procedure when such rules are consistent with Charter or by-laws of The PARTNERSHIP.

XI. REVISIONS AND AMENDMENTS

These by-laws may be amended or altered by a two-thirds majority vote of the Board of Governors, or by a majority of the members/partners at any regular or special meeting, providing the notice for the meeting includes the proposals for amendments. Any proposed amendments or alterations shall be submitted to the Board or the members in writing, at least (10) days in advance of the meeting at which they are to be acted upon.

Proposed amendments to Vail Valley Partnership governing documents may be approved by the Board without member approval unless the Act, articles of incorporation or the bylaws specifically prohibit such an amendment, or the amendment would change the rights of one membership class relative to another membership class.

Subject to Colorado state law, new by-laws may be adopted or these by-laws may be repealed or amended at the annual meeting of The PARTNERSHIP, or by ballot as herein provided, or at any other meeting of The PARTNERSHIP called for that purpose, by a majority vote of members voting pursuant to these by-laws.

XII. MISCELLANEOUS

a. Keeping Records

The PARTNERSHIP shall keep adequate and correct records or accounts and minutes of the proceedings of its members, Board and committees of the Board. The PARTNERSHIP shall also keep a record of its members/partners giving their names and addresses. The minutes shall be kept in written



form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

b. Solicitations

At all meetings called in the name of this organization, those attending shall be protected against solicitation for money, service or sales of tickets, except for solicitation for The PARTNERSHIP work. The announcement of social gatherings, meetings, or entertainment in the community shall not be regarded as solicitation.

c. Advertising

No advertising of any description may be distributed at or in connection with any meeting of this organization unless it has direct bearing on the welfare of this body or the community that it serves.

d. Protection of VAIL VALLEY PARTNERSHIP Logo

The logo of The PARTNERSHIP constitutes a trademark, and no VAIL VALLEY PARTNERSHIP member/partner, individual or company shall make use of The PARTNERSHIP logo without the express written consent of the President/CEO of the Chamber.

NYC[™]
& Company

2012

**ANNUAL
SUMMARY**



Dear Friends and Colleagues:

It was an exceptional 2012 for New York City, with a record 52 million visitors from around the globe coming to explore our diverse range of neighborhoods, attractions, restaurants, shops and cultural institutions. This marked the third consecutive record year for the City's tourism industry, a testament to the tremendous work being done by NYC & Company and our incomparable array of members. Indeed, our industry continues to be a critical economic engine, generating billions of dollars for all five boroughs, supporting thousands of businesses and creating much needed jobs. Thanks to all of your dedication, we have taken tourism to new heights and are already looking to keeping the momentum going through 2015 and beyond.

Of course, we are very fortunate to be able to work in and promote such an extraordinary city. All five boroughs have a unique character and spirit with something to offer everyone, from all walks of life. For our part, we have worked diligently to highlight all the amazing things to see and do through vibrant and imaginative programs such as NYC Restaurant Week and Broadway Week as well as partnerships with Norwegian Cruise Line and our Family Ambassador, The Muppets. We also continue to make enhancements to our website, nycgo.com, to ensure visitors and residents have the freshest and most up-to-date information to navigate the City. With Broadway attendance strong and numerous cultural institutions reporting record attendance, it is clear our message is resonating and our efforts are being rewarded.

While our future goals are ambitious, I am confident that together we can not only reach them but even exceed them. Through the shared commitment and strength of NYC & Company, our members and partners, we will continue to topple record after record and elevate the City's tourism industry to even greater heights.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Rafferty", written in a cursive style.

Emily Rafferty
Chairman, NYC & Company
February 2013



Dear Friends and Colleagues:

Once again, we are proud to be celebrating yet another record-breaking year—on pace to reach our new goal of 55 million visitors and \$70 billion in annual economic impact by 2015. As always, our members and partners are instrumental to this shared success—your commitment and dedication has helped New York City become the country’s top overall city destination and number one visitor spending market. New York City is the undisputed standard-bearer for the tourism industry, and destinations around the world are looking to emulate our model.

The fantastic growth of the last six years is also in large part attributable to our investments on the international front. In 2006 our team made a conscious effort to target foreign visitors, a demographic that stays longer, spends more and explores more of the City than their domestic counterparts. Our goal was to not only continue to maintain our presence in traditional markets like the UK and Germany, but also gain a strong foothold in emerging markets such as Brazil, Australia, India and China. These efforts have paid off with New York City’s market share for global travel to the United States, increasing from 28% to almost 33%. In other words, New York City is not only getting more visitors but we are also winning visitors over from other destinations.

As we look ahead over the next two years, there are many reasons for optimism: a thriving hotel sector, a growing meetings and conventions market, and new development projects coming online across all five boroughs. Most importantly, however, our industry continues to create jobs faster than any other sector in the City. At NYC & Company, we remain dedicated to keeping this momentum going and, with the support of our incomparable members, will do all we can to further enhance the energy and vibrancy of New York City.

Sincerely,

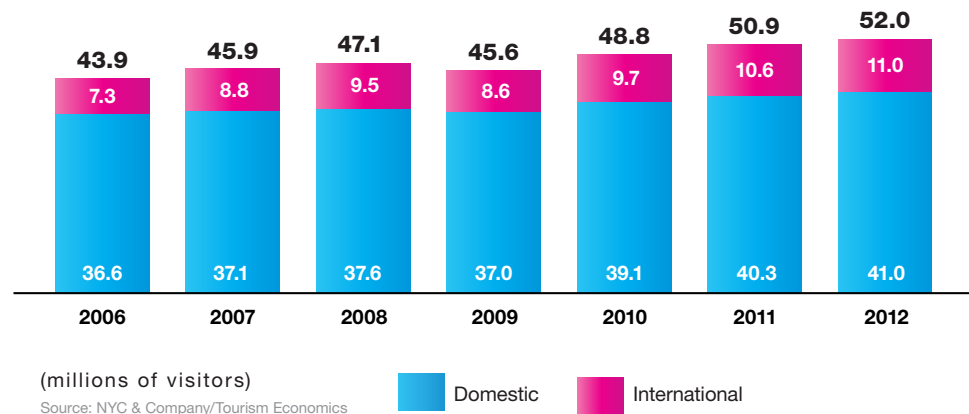
A handwritten signature in black ink, appearing to read "G. Fertitta", written in a cursive style.

George Fertitta
CEO, NYC & Company
February 2013

THIS IS NYC & COMPANY.

For New York City and NYC & Company, 2012 saw records broken for the third year. The City welcomed an estimated 52 million visitors — a 2.2% increase over 2011.

NYC Visitor Trends:



Tourism remains one of NYC's largest and most vital industries, supporting over 330,000 jobs and generating \$37 billion in direct spending across the City's five boroughs. In 2012 hotels booked more than 29 million room-nights; restaurants experienced a surge in reservations; and many museums saw record attendance to their exhibitions. Hotel demand surged and helped absorb the addition of 28 new properties and nearly 4,000 new hotel rooms.

These successes are all the more remarkable in light of the challenging global economic environment of the past few years.

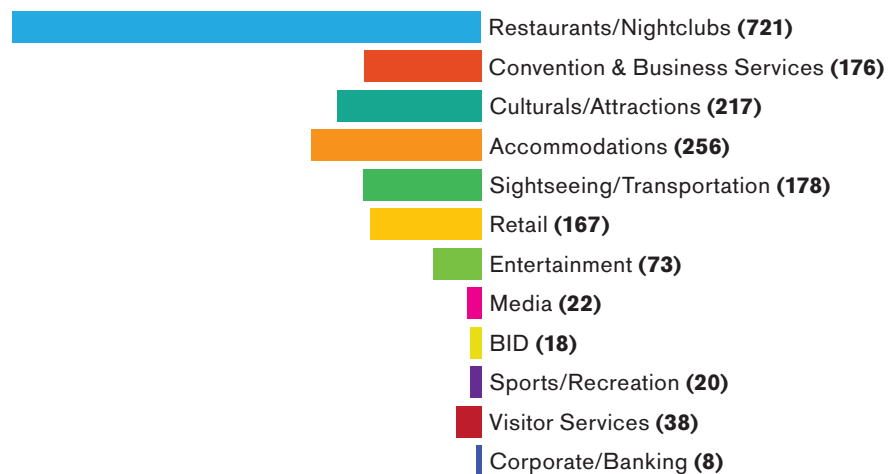
As always, we will strive to keep our forward momentum going. Our ambitious visitation goals will be reached through investment in emerging markets, communication with our global press network, innovative new marketing offerings, and a relentless focus on spotlighting our member organizations. NYC & Company is proud to contribute positively to the prosperity of the tourism and hospitality industry, our members and to the City of New York—and we will continue to work tirelessly to raise the bar even higher. New York City offers exceptional, unforgettable experiences to visitors, and we strive to remind people of why they need to return again and again. We want them to know what we've always known: that there is no other city like this in the world. This is New York City.

MEMBERSHIP

NYC & Company's membership is a microcosm of the City itself, a diverse group of businesses large and small. Nearly 1,900 members from all five boroughs come together with the common goal to strengthen their own marketing strategies and initiatives by working with NYC & Company, maximizing the reach of its marketing programs and amplifying the positive messaging about New York City.

NYC & Company's membership spans the convention, tourism and hospitality industries. Dues-paying members include major corporations and nonprofit organizations ranging in size from small to large, spanning all five boroughs. NYC & Company is proud to work on behalf of so many of New York City's finest businesses, including many of the City's newest hotels, restaurants, retailers and visitor attractions.

NYC & Company's Membership Composition:



There are many benefits to membership with NYC & Company, outlined here:

nycgo.com

NYC & Company's award-winning website, nycgo.com, won the 2012 Webby Award for Tourism, the Internet's highest accolade—the site's second Webby win in three years. Winning the Webby is not only a great honor, but it's also a terrific way to drive visitors to New York City and NYC & Company members. The official source for information about where to go and what to do in NYC, nycgo.com is targeted to both visitors and locals alike.

Every member has a dedicated property page on nycgo.com showcasing its business. Each property page includes a detailed description, along with multiple photos, a direct link to the business' own website and social media links. Members can also submit events and offers to be listed on nycgo.com.

The members-only section on nycgo.com has a searchable membership directory for connecting with other members, a searchable convention calendar for targeting certain groups coming to NYC, as well as trade show leads gathered by the Tourism and Convention teams. The section also features valuable research information to help members plan their marketing strategies.

Marketing Programs

As the official marketing organization for New York City, NYC & Company develops a wide array of marketing initiatives with its members in mind, as well as platforms designed to support and promote the City. Programs include:

NYC Restaurant Week (Summer/Winter): Celebrating its 20-year anniversary in 2012, this semiannual prix-fixe dining program showcases NYC's vibrant and diverse food culture by promoting more than 300 of the City's finest restaurants.

Broadway Week (Fall/Winter): Launched in 2011, this program has quickly become one of NYC & Company's most anticipated, featuring two-for-one ticket deals to participating Broadway shows.

Save the Date: This dynamic planning tool allows locals and visitors to see what's going on and discover event dates and offers in advance, when they are in the planning stages for a visit, as well as find savings, deals and advice throughout the entire year to optimize and inform their trips to NYC.

Official NYC Publications

Published quarterly, the *NYC Official Visitor Guide* features itineraries, neighborhood highlights, a calendar of events and coupons. The guide provides detailed member descriptions for accommodations, transportation, sightseeing, cultural attractions, nightlife, shopping, sports and services available throughout the five boroughs. It is the only guide that goes out of market, influencing visitor purchasing decisions.

Published twice annually, the *NYC Official Visitor Map* makes it easy for visitors to get around the five boroughs and includes details on top attractions and subway stops and useful travel tips.

Targeted to meeting and event professionals, the annual *NYC Official Meeting & Event Planner* contains detailed information on member meeting and event venues, convention facilities, accommodations, restaurants, services and happenings throughout the City.

Incentive planners, tour operators and retail travel consultants can craft custom NYC itineraries for their clients using the *NYC Official Travel Planner*. Updated annually, the planner highlights hotels; destination services, including dining and shopping; and happenings around town, delineating the numerous options available to create an unforgettable NYC experience for travelers.

Official NYC Information Centers

The Official NYC Information Center in Midtown Manhattan is the ultimate destination for visitors and residents to find all they need to know about what to do and see in New York City. Multilingual Information Specialists are on hand to assist visitors find and book tourist passes and tickets for attractions, cultural venues. Members are displayed and featured on custom itineraries. Members are also showcased and promoted at satellite locations in Times Square and The Studio Museum in Harlem, as well as at kiosks in City Hall Park and Chinatown.

Networking Events

With business card exchanges, member orientation breakfasts, speed-networking events and business seminars, there are many opportunities throughout the year to meet and network with other member professionals. In 2012 NYC & Company hosted business card exchanges at the New-York Historical Society, Highline Ballroom, Prospect Park Zoo and Museum of the Moving Image, and even aboard the new Statue Cruises Hornblower Hybrid and on the Zephyr yacht. NYC & Company had speed-networking events at several member venues, as well as new-member orientations throughout the year at the Official NYC Information Center.

Research

Another key membership benefit is access to NYC & Company's research information, tracking who is visiting the City, including detailed international and domestic visitor information, demographics, length of stay and spending patterns. Members can use this data to inform their own marketing strategies and initiatives.

Looking Toward 2013

In 2013 the Membership department will continue to focus on new member sales and customer service. Building on the successes of legacy marketing programs, the team also will look for new ways to help retail, hotel, sports and nightlife businesses. The department's commitment to highlighting Lower Manhattan, Harlem and the outer boroughs—and in turn bolstering visitation to members in those parts of NYC—will only be stronger. NYC & Company looks forward to expanding the outreach of its publications, mobile website, social media and sales tools to showcase member businesses and give visitors more reasons to return to New York City again and again.

TOURISM DEVELOPMENT

Tourism Development is responsible for expanding the presence and reach of New York City around the world through an array of sales and marketing efforts. Initiatives begin with a network of 18 representative offices establishing trade relationships throughout the Americas, Europe and Asia-Pacific. Focus in 2012 included maintaining a continuous dialogue with the travel trade, developing new product offerings in market and driving need-period travel.

Keeping in constant communication with the trade and developing new offerings go hand in hand. Education plays a key role in these efforts as the team hosted trade familiarization trips throughout the year to enhance product knowledge of New York City. The online NYC Travel Training Academy (nycgo.com/training) provides member product knowledge in 10 languages across 27 markets worldwide, closing 2012 with more than 25,500 registered users. And more than 29,500 trade members worldwide received product updates on a quarterly basis via the Travel Trade Newsletter.

Throughout the year sales missions and trade shows were key initiatives, giving priority positioning to member products and providing a relevant audience in market.

2012 sales missions and trade shows (in chronological order):

Sales Missions

Australia/Visit USA	Germany/Italy
Brazil (March and October)	India
Canada	Scandinavia
France/UK	China/CITM
Japan/Korea	

Trade Shows

Vakantiebeurs (The Netherlands)	Cruise3Sixty (US)
ABA (US)	ATM (Dubai, UAE)
FITUR (Spain)	International Pow Wow (US)
Holiday World (Ireland)	IFTM (France)
RSA (US)	SYTA (US)
Braztoa (Brazil)	La Cumbre (US)
MATKA (Finland)	JATA (Japan)
BIT (Italy)	TTG (Italy)
AIME (Australia)	Bienvenue (Quebec)
ITB (Germany)	FIT (Argentina)
MITT (Russia)	WTM (UK)
TUR (Sweden)	CITM (China)

In an effort to drive need periods, cooperative promotions were established in market, focusing on tactical offers to direct travel to NYC. Among the highlights from 2012 was utilizing NYC & Company's existing out-of-home media to create a larger cooperative campaign with travel partners across Brazil, Italy, Portugal and Spain.

Looking Toward 2013

In 2013 the Tourism Development team will remain focused on promoting member products across all five boroughs through international and domestic trade FAMs. The team will expand efforts further into emerging markets in Southeast Asia, the Middle East and Latin America as well as work to increase NYC's market share across the current represented markets.

CONVENTION DEVELOPMENT

Convention Development acts as a catalyst between the meetings industry and the NYC hospitality industry, driving meetings, conventions and trade shows to book groups into New York City. Sales efforts are primarily focused on industry trade shows and events domestically, with a focused expansion into Europe in 2012.

2012 trade shows and events (in chronological order):

HelmsBriscoe Partner Meeting (US)	MPI Kansas City Chapter (US)
PCMA's Annual Meeting (US)	AIBTM (US)
DMAI's Destinations Showcase (US)	ASAE (US)
MPI Northern California Chapter (US)	Incentive Works (Canada)
NYSAE's Meet NY (US)	HSMAI's Affordable Meetings (US)
ConferenceDirect's Annual Partner Meeting (US)	European MICE Roadshow (France/Germany/UK)
MIC of Colorado (US)	IMEX America (US)
ASAE Springtime Expo (US)	EIBTM (Spain)
IMEX (Germany)	IAEE (US)
ESSAE (US)	Holiday Showcase (US)

An additional focus, NYC member product education, is realized through sales calls, events and familiarization tours. Member need periods, also a priority, are supported with programs like Meet Me on Sunday.

The convention and meetings segment remains an important foundation of the City's market mix and continues to serve as a hedge against fluctuations in leisure and transient business. In 2012 the team generated 1,086 qualified leads that resulted in 386 meetings booked, more than 163,000 room-nights and more than \$122 million in economic impact.

Eighty-eight percent of bookings in 2012 (77,800 room-nights) will directly affect 2012 and 2013; 77% of bookings are 100 rooms on peak or below. Both are a reflection of our increased efforts on shorter term and self-contained pieces of business. An additional 414,000 room-nights were either lost or turned down due to availability, rate or increased competition from other destinations.

Looking Toward 2013

In 2013 the Convention Development team will remain focused on small and midsize meetings, as well as international meetings and incentive and congress business. Increased client engagement for our members and creating third-party opportunities for new targeted business will be important drivers moving forward. Need periods will remain a priority, and efforts will continue to promote neighborhoods throughout the five boroughs. To enhance the team's engagement within the industry and raise destination visibility, NYC & Company will launch an NYC meetings campaign across targeted trade media.

MARKETING AND PARTNERSHIPS

NYC & Company's Marketing team promotes the dynamic New York City brand worldwide, highlighting its unparalleled dining, shopping, entertainment and cultural offerings, and encouraging stays at more than 200 hotel member locations. NYC & Company marketing programs—supported by valuable partners such as American Express, Disney, the New York Comedy Festival, Norwegian Cruise Line, OpenTable, Syfy, Travelocity and *Time Out New York*—and nycgo.com, the award-winning official guide to New York City, position NYC as a must-see-now destination while offering locals and visitors the tools to experience the City in the most accessible and fulfilling manner. As a result, 2012 was another record year for both international and domestic tourism, as well as for local economic development. Following is a summary of key 2012 marketing programs.

nycgo.com

The center of activity for NYC & Company, nycgo.com provides a platform for all marketing programs, a spotlight for member organizations and a dynamic mix of editorial content that showcases all the things to see and do in NYC. In 2012 nycgo.com received the Webby Award for being the best tourism website in the world—the second win and third nomination in three years. The site has seen a steady increase in visitation, with an average of 5 million page views each month. New in 2012, 11 geo-targeted webpages were launched, providing visitors from NYC's top markets with essential information about the City in their home languages. The mobile version of nycgo.com has also seen tremendous growth in 2012, as more and more people turn to their smartphones and tablets to research destinations and make travel decisions. Along with the web and mobile site, NYC & Company expanded their social media presence with increased Facebook and Twitter followings and the launch of 12 international Facebook pages and nine international Twitter accounts, which provide foreign consumers, press and travel trade ongoing in-language content. In addition to

Facebook and Twitter, NYC & Company continues to seek out new ways to reach and engage with potential visitors, adding Instagram, Tumblr and Pinterest accounts.

NYC Restaurant Week

NYC Restaurant Week, the City's original culinary celebration and the world's first restaurant week, continued its growth in 2012. It celebrated its 20th anniversary in 2012 and continued to surpass previous records for seated diners, restaurant revenue and web traffic. Designed to increase traffic during slow periods for the industry, the semiannual prix-fixe dining promotion remains one of the most highly anticipated events in NYC. NYC Restaurant Week provides a tremendous value to consumers: the cost for the program's iconic three-course menus remained the same for more than 10 consecutive seasons: \$24.07 for lunch and \$35 for dinner. With the help of Founding Sponsor American Express, the 2012 programs saw more than 470,000 covers, which generated more than \$15 million in revenue for participating restaurants from online reservations alone.

Broadway Week

Broadway has been an iconic pillar of American culture for more than 100 years. Its appeal crosses over from native New Yorkers to long-haul travelers, from suburbanites to international tourists. Launched in January 2011, Broadway Week provides theater fans with the opportunity to purchase two-for-one tickets to Broadway's hottest shows. The program occurs in the winter and fall, when ticket sales are slower. The success of the program continues to grow year over year, with a record-breaking 150,000-plus tickets sold and nearly \$9.5 million in revenue generated in 2012 alone. And once again, an AARP promotion rewarded silver-segment members with an exclusive pre-sale offer.

Off-Broadway Week

Off-Broadway Week appeals to a broad spectrum of audiences, from seasoned theatergoers to bargain-hunting students looking for something new and exciting at a reasonable price. The program provides tremendous incentive to experience Off-Broadway during January/February and September/October through the two-for-one-ticket promotion. Developed in partnership with The Off-Broadway League, the program was also supported by NBC 4 New York and media partner *Time Out New York*. The 2012 programs saw record numbers of ticket sales for both seasons.

Comedy Week

In 2011 NYC & Company and the New York Comedy Festival (NYCF) created Comedy Week—a celebration of New York City as the comedy capital of the world. The goal was to encourage people to see live comedy at one of the City's many comedy venues. Building on the success of the inaugural year, Comedy Week 2012 was extended to a full week (November 5–11), and free comedy events supported by partners Gotham Comedy Club, Gray Line New York, Stray Boots and Upright Citizens Brigade were added to the lineup. Keegan-Michael Key and Jordan Peele, stars of Comedy Central's hit show *Key & Peele*, performed for hundreds of comedy fans at New York University's Skirball Center for the Performing Arts.

Save the Date

NYC & Company launched a travel-planning tool on nycgo.com called Save the Date that provides visitors with an enormous array of things to see and do across the five boroughs. When visitors enter their desired travel dates, they are presented with special offers from member hotels and retail organizations, marketing program information (NYC Restaurant Week, Broadway Week, Off-Broadway Week and more), plus lists of all the must-see and -do events that take place in NYC year-round. Not only does the tool make planning a trip to NYC much easier, but its robust content offerings help show how dynamic a destination New York City is. To help drive travel during the first quarter of 2013, NYC & Company launched the Sample NYC Winter Sale marketing campaign, which, hand in hand with Save the Date, showcases all the events, marketing programs and hotel promotions taking place during the winter in NYC. Designed to encourage consumers to give the gift of NYC for the holidays, Sample NYC Winter Sale was launched in December with a full out-of-home campaign in the greater Boston area that encouraged weekend getaways to NYC.

The Muppets, Official Family Ambassadors to NYC

The Family Ambassador program was created in 2009 to help position New York City as a safe, welcoming family-friendly destination. This year NYC & Company selected The Muppets to be the Family Ambassadors and for the first time expanded the program to promote year-round visitation. In April Kermit the Frog, Miss Piggy, Gonzo the Great and Pepe the King Prawn joined Mayor Bloomberg and NYC & Company CEO George Fertitta to announce the program's start at a press conference at the Official NYC Information Center–Midtown. All year long the Muppets provided tips on things to see and do throughout the City and highlighted family-friendly NYC & Company members on a dedicated nycgo.com page. New for 2012, a hotel promotion was created as part of the Family Ambassador program, providing visitors with hotel incentives and a Muppets gift bag when they booked stays at one of more than 40 member hotels. Finally, NYC & Company worked with 11 cultural institutions across the five boroughs to create a fun-filled, Muppets-inspired scavenger hunt designed to drive traffic to the organizations all winter long.

Fashion's Night Out

For the fourth straight year, NYC & Company partnered with *Vogue* and the Council of Fashion Designers of America (CFDA) to produce Fashion's Night Out (FNO) on September 6. More than 900 retailers participated across all five boroughs, and FNO's success in New York City was amplified by the remarkable global expansion of the event: stores in 19 countries and more than 500 US cities celebrated this inspired initiative in 2012 as well. Launched in 2009, FNO is an unprecedented initiative created to celebrate fashion, restore consumer confidence, boost the industry's economy and put the fun back in shopping. To support these efforts, NYC & Company provided significant citywide media assets to promote the event, in addition to taxi videos, logistics coordination, communications support and hotel promotions. With the aid of partners Ford, Maybelline and QVC, the 2012 FNO initiative received more than 3.6 billion press impressions, a 14.3% increase from last year, and FNO merchandise sales raised about \$500,000 for the New York City AIDS Fund, bringing the total amount raised since 2009 to about \$2 million.

The Signature Collection Third Night

Luxury is defined in any number of ways: comfort, attention to detail, an escape from the everyday. In New York City, luxury is defined by The Signature Collection, a selection of the finest accommodations in the world, all uniquely New York. Designed to stimulate tourism and spending in NYC during biannual soft periods through exclusive value-package offerings, The Signature Collection Third Night program allows consumers to get a third night free when they book and pay for two nights at participating Signature Collection hotels. Partners such as Saks Fifth Avenue and the Madison Avenue BID have supported the program by offering exclusive VIP shopping experiences to Third Night guests. Nearly 3,000 room-nights were booked as a result of the 2012 programs (January/February and July/August).

The Design Collection

Great design—whether through the physical structure, aesthetic of the interiors or staff uniforms—is the common thread that links the hotels in The Design Collection, a program that was launched in September. NYC & Company will be developing programs for Design Collection guests, providing them with special access to some of NYC's greatest design-related events and venues.

Lower Manhattan Marketing Program

Launched in June 2011, the Lower Manhattan marketing program celebrates the vibrancy and excitement of downtown NYC—and helps spread the word that Lower Manhattan is a revitalized NYC neighborhood. The program promotes hotel value packages that focus on special weekend rates at 13 hotels in Lower Manhattan as well as offer added-value benefits to explore Lower Manhattan (late checkout, complimentary Downtown Culture passes, New York Water Taxi tickets and Century 21 gift cards). Additionally, the dedicated nycgo.com page provides suggestions on how to explore Lower Manhattan and nearby neighborhoods. The program was supported by a multi-channel media campaign valued at a total of \$3.9 million.

NYC <30 Youth Program

In 2012 NYC & Company launched a new initiative designed to encourage travelers ages 18–29 to plan a trip to New York City. The program, NYC<30, highlights youth-focused events and activities—shopping, fashion, dining, culture and nightlife—throughout the City, and provides in-depth itineraries for exploring some of the City's hip and youthful neighborhoods. The core message is that a trip to New York City is a rite of passage. To promote the initiative internationally, NYC & Company partnered with MasterCard to develop a series of special promotions to encourage visitation. Thousands of MasterCard holders in the target demographic received marketing messages that included exclusive offers and experiences at more than 25 NYC & Company member locations. Research suggests that the earlier a traveler visits New York City, the likelier they become an NYC visitor for life, so by actively engaging with the youth market, New York City is getting a head start on creating repeat customers.

Mix-n-Match

In February 2012 Mix-n-Match provided American Express Cardmembers with a great incentive: spend \$200 in a total of two participating places and get \$50 back. The program drove targeted spending at more than 400 local merchant locations (274 individual businesses) across dining, shopping, arts, culture, museums, entertainment,

Broadway and attractions. Mix-n-Match was supported by a fully integrated marketing campaign valued at \$900,000. In total, the program resulted in an almost \$3 million spend at local merchants.

Syfy and 31 Days of Halloween NYC

For the second straight year NYC & Company and Syfy celebrated Halloween in New York City throughout October. The program captured the imagination of New Yorkers and brought Syfy's 31 Days of Halloween programming to life in NYC through a series of events and partnerships across the five boroughs. The 2012 program was bigger and better than the first year, featuring Syfy sponsorships of 15 NYC Department of Parks & Recreation events, a partnership with national Halloween retailer Spirit Halloween, a 24-page Halloween event guide in Time Out New York, plus nearly 400 out-of-home placements throughout the City. The monthlong program culminated in a three-day Halloween festival in Flatiron Plaza that featured face painting, arts and crafts, a photo booth and more. The centerpiece of the festival was the Syfy Stage, where daily performances, including those from top Broadway and Off-Broadway shows, took place. The program provided enormous brand exposure for Syfy, delivered meaningful engagement with their fans and provided wholesome fun to thousands of New Yorkers.

Travelocity

Travelocity has been a longtime partner of NYC & Company. In October 2012 NYC & Company welcomed the Roaming Gnome back to the City to kick off "The Great Gnome Nabbing" contest: eligible contestants could submit a video explaining why they should be "nabbed" by the Roaming Gnome and taken on a whirlwind trip around the globe. To build citywide excitement and awareness, NYC & Company helped produce a consumer activation event in Flatiron Plaza on October 2-3. There, consumers learned about the contest, uploaded video entries in kiosks set up around the Roaming Gnome's "stakeout" car and entered hourly raffles for a chance to win \$1,000 toward a Travelocity vacation package or hotel stay. On October 1, NYC & Company produced a press event to announce the contest, while the Roaming Gnome announced his "arrival" in NYC by projecting his unmistakable silhouette against buildings across the City. After hundreds of entries and thousands of votes, Travelocity named the winners on November 29, and NYC & Company helped kick off their worldwide adventure in New York City by helping coordinate a fun-filled itinerary packed with must-see arts, dining and entertainment while they were here.

Looking Toward 2013

After a successful 2012, NYC & Company looks to continue its momentum and raise the bar again in 2013 with new partnerships and initiatives. In addition to the continued support for signature marketing and hotel programs, there will also be focus on refining the Save the Date planning tool with the creation of new offers and hotel promotions designed to boost travel during key needs periods. From a partnership perspective, NYC & Company plans to expand its longstanding relationship with American Express to reach travelers in international markets, while it looks forward to building its relationship with Norwegian Cruise Line, first-time sponsors of NYC Restaurant Week and Broadway Week. On the digital front, NYC & Company will continue to grow their audiences across nycgo.com and supporting channels, and improve the design of the web and mobile sites to provide better ways for consumers to find content, book travel

and purchase tickets. New for 2013 is the launch of NYCxDESIGN, a program being developed with City Council to celebrate and showcase the City's rich and diverse design communities. Additionally, a new marketing campaign will be developed to promote the exploration of the City's diverse neighborhoods. NYC & Company remains committed to developing new and exciting programs to help drive business to members and encourage travel to all five boroughs of New York City.

COMMUNICATIONS AND EXTERNAL AFFAIRS

A few months after Mayor Bloomberg joined NYC & Company Chairman Emily Rafferty to welcome New York City's 50 millionth visitor, NYC & Company traveled to International Pow Wow, in Los Angeles, to announce a new tourism goal: 55 million visitors and \$70 billion in economic impact by 2015. The press conference, which included hundreds of journalists from news outlets across the globe, was a launching point for showcasing the industry's dramatic growth since 2006. Essential to the department's messaging strategy for 2012 was emphasizing the importance of tourism to New York City's economy while highlighting the initiatives to reach new audiences.

Over the past six years, as NYC & Company focused on international visitors and drastically expanded its global network, the press coverage generated has become a critical promotional tool to directly reach consumers in market—especially as New York City must compete with the multimillion-dollar advertising budgets of other destinations. To this end, the Communications and External Affairs teams worked directly with tourism stakeholders and the worldwide press to ensure brand visibility with foreign consumers and promote new programs and initiatives across an array of demographics.

To support the company's efforts to tap emerging markets, the team renewed the City's partnership with São Paulo, Brazil, while also working at the federal level to improve visa processing and other impediments to entry into the United States. As the top international destination and number-one port of entry in the United States, NYC stands to benefit the most when countries like Brazil are given more access. Also, in coordination with the Tourism Development department, the team launched New York City's newest international office, in Mexico. The team, along with CEO George Fertitta, held a press conference in Mexico City and met with Mayor-elect Carlos Mancera to begin exploring a city-to-city partnership for 2013.

With a network of 18 offices serving 25 markets around the globe, the in-market international press teams generated millions of dollars in earned media by promoting New York City's five-borough product as well as NYC & Company's programs and members. The NYC-based press team attended key travel trade shows around the world to promote NYC in 2012, including ITB, in Berlin; International Pow Wow,

in Los Angeles; and World Travel Market, in London. Additionally, NYC & Company's international network also supported in-market sales missions and travel trade shows—including ones in Brazil, China and India—to maximize exposure for New York City tourism. NYC & Company's Communications team also worked with travel media from around the globe to pitch and shape topical stories about New York City, and welcomed several individual and group media to the City who came to write firsthand destination articles. One notable outlet that the team worked closely with was *Today Show Australia*, which broadcast from Times Square for five straight days in October, promoting the City's five boroughs to NYC's fifth-largest source of overseas visitation. The show reached almost 4 million viewers a day and is the number-one morning show in Australia.

Communications efforts extended beyond promoting New York City in certain key markets; the team focused on targeting important audiences such as youth, LGBT and family—both domestically and internationally. In 2012 NYC & Company's press team amplified several significant organizational initiatives like CityMaps, along with core marketing programs such as NYC Restaurant Week, Broadway Week, Off-Broadway Week, Comedy Week and The Signature Collection Third Night hotel promotion. The team orchestrated and led the global press strategy and launch of The Muppets as the City's new official Family Ambassadors, emphasizing New York City as a safe and affordable family destination. Additionally, the Communications team assisted Mayor Bloomberg and City Council Speaker Christine Quinn in announcing the strong economic impact of same-sex marriage on the one-year anniversary of its legalization in New York.

On the domestic PR front, the team continued to highlight borough travel to the City with several major placements appearing in national publications such as *The New York Times* and *USA Today*. A critical element to our five-borough press strategy has been the promotion of New York City's hotel growth and the thousands of new rooms coming online outside Manhattan, most notably in Long Island City, Queens, and Downtown Brooklyn. Additionally, through collaborations with initiatives such as the CityMaps app and the Rooftop Film series, NYC & Company's press team was able to highlight the accessibility, diversity, value and affordability of all five boroughs. In 2012 the office generated 549 print articles, domestically generating 151 million impressions and close to \$23 million in total media value.

In addition to supporting NYC & Company's strategic efforts to increase market share globally and reach new audiences, the Communications and External Affairs teams consistently strove to protect the image of the tourism industry and the City as a whole. After Hurricane Sandy, the department worked directly with NYC & Company's Membership and Tourism Development teams to provide city, federal and state emergency workers with accurate and timely information on hotel-room availability for displaced residents as well as updates on affected businesses and attractions. Additionally, the team focused on communicating tourism-related updates on business reopenings to the media and other constituencies, including the company's 18 international offices—emphasizing that while certain areas were hit hard, 95% of the City was back online almost immediately. As a result of the full team effort, New York City saw few cancellations, and the industry still managed to reach record-breaking visitor numbers and growth in multiple areas, including cultural attendance

and hotel occupancy. The year-end tourism announcement of the record 52 million visitors in 2012 was held at the American Museum of Natural History with Mayor Bloomberg and the Radio City Music Hall Rockettes on New Year's Eve.

The Communications and External Affairs teams work around the clock—often across many time zones—to promote and protect the brand of New York City. Through the network of international press representatives in 25 markets, the department monitors and manages media coverage and the political landscape that impact the image and reputation of the City. Through a continuous dialogue with elected officials, the media and industry professionals, the team conveys the importance of tourism across the country and throughout the five boroughs.

Looking Toward 2013

With an ambitious new tourism goal of 55 million visitors by 2015, the Communications and External Affairs teams will once again help develop strategic and promotional plans for new audience development. Through stakeholder outreach, deeper relationships with the media and social media tools, the department will champion the growth and importance of the tourism industry. With a new administration in 2014, there will also be a concerted effort to ensure continued tourism funding and that the role of NYC & Company and its members is acknowledged and protected.

RESEARCH AND ANALYSIS

The Research and Analysis department manages a comprehensive research and intelligence unit for the City's travel and tourism industry. It also functions as the office of record for vital statistics on New York City's travel sector. Reports and analyses are available to NYC & Company members, elected officials, city and state agencies, and key stakeholders.

The department compiles reports that measure the economic impact of NYC's tourism industry, profile visitors and track visitor volume from dozens of different origin markets and niche segments. Separate reports pinpoint citywide hotel development and track average hotel occupancy and room rates. The department also conducts extensive proprietary research to evaluate key marketing programs and events.

NYC & Company also deploys an innovative suite of forecasting and tracking statistical models to inform marketing, tourism and strategic planning decisions. These dynamic statistical tools help position NYC's tourism economy in terms of market size, growth potential, propensity to visit NYC, risks, value and access.

In 2012 NYC & Company market research initiatives spanned a variety of topics vital to the City's continued economic health. In addition to the regular audience and consumer surveys of programs such as NYC Restaurant Week, Fashion's Night Out, Broadway Week and Off-Broadway Week, the department responded to timely events, such as projecting the economic impact of the 2011 passage of the Marriage

Equality Act and identifying the effect of Hurricane Sandy on NYC & Company members. In its ongoing efforts to aid the City's tourism and convention outreach, the department identified key decision points in how meeting planners select a city for conventions and meetings. And in keeping with the City's status as a cultural mecca, the department conducted the third wave of the NYC Cultural Audiences survey and presented an educational workshop to members at the New-York Historical Society.

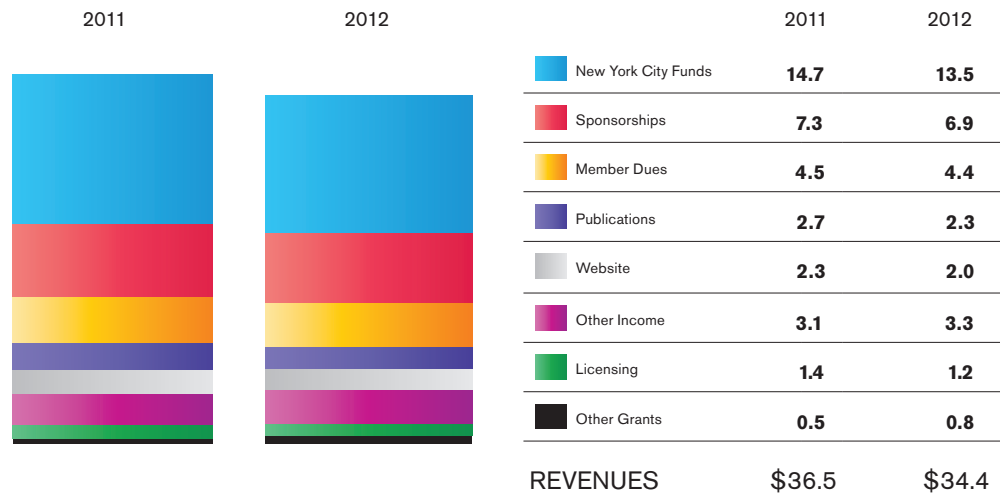
Looking Toward 2013

The Research and Analysis department will follow up with surveys of marriage impact, cultural audiences, restaurant customers, Broadway and Off-Broadway audiences and other key marketing programs in addition to the weekly, monthly, quarterly and annual reporting of visitor statistics and indicators.

FINANCIALS

In 2012 NYC & Company's City contract funds decreased by \$1.2 million, or 8%, as a result of ongoing City budget reductions. The Company's other sources of revenue decreased by \$0.9 million, or 4%, due primarily to a challenging sponsorship environment. Publications was lower due to publishing one of our guides in 2013 that historically would have been released in 2012, and other revenue sources remained steady including Member Dues.

NYC & Company's Revenues:



in millions (\$)
Excludes value of in-kind media contributions

BOARD OF DIRECTORS

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Chairman

George Fertitta

Chief Executive Officer

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Daniel A. Biederman

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Nick Valenti

Robert Walsh

Peter Ward

Gerri Warren Merrick

Lloyd A. Williams

Jack Withiam, Jr.

Howard Wolfson

Kathy Wylde

David Yassky

Tim Zagat

Names in bold indicate Executive Committee members.

Names in italics indicate ex-officio members.

As of December 31, 2012

SENIOR STAFF

(as of December 2012)

George Fertitta

Chief Executive Officer

Jane Reiss

Chief Marketing Officer
Executive Vice President
Partnerships

Kevin Booth

Chief Financial Officer

Bryan Grimaldi

Chief Operating Officer
General Counsel

Kimberly Spell

Chief Communications
Officer

Willy Wong

Chief Creative Officer

Nevah Assang

Senior Vice President
Creative & Content

Paula Berry

Executive Director
NYHarborWay

Kelly Curtin

Senior Vice President
Membership &
Destination Services

Fred Dixon

Senior Vice President
Tourism & Convention
Development

Donna J. Keren

Senior Vice President
Research & Analysis

Mike Hopper

Vice President
Sports Marketing

CONTACT US

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New York, NY 10019

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CONTRACT

between

THE CITY OF NEW YORK

and

NYC & COMPANY, INC.

Dated as of July 1, 2011

For the provision of consulting, marketing, and licensing services

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This contract (the “Contract”), dated as of July 1, 2011, is by and between THE CITY OF NEW YORK (the “City”), a municipal corporation organized under the laws of the State of New York, having an office in City Hall, New York, New York 10007 and NYC & COMPANY, INC. (the “Consultant”), a not-for-profit corporation incorporated under the laws of the State of New York, having an office at 810 Seventh Avenue, New York, New York 10019.

WHEREAS, the convention and tourism industries are essential to the economic well-being of New York City; and

WHEREAS, those industries provide significant employment opportunities for New York City's labor force; and

WHEREAS, direct and indirect revenues attributable to sales of goods and services associated with these industries represent significant contributions to New York City's tax base; and

WHEREAS, the City further seeks to (1) efficiently manage the use of municipally-owned marketing and licensing resources to communicate with those who live and work in New York City and visitors to New York City, to enhance New York City's reputation, and to generate public revenue, and (2) efficiently use marketing expertise and available resources to promote New York City's benefits, qualities and advantages to individuals and businesses outside New York City for the purpose of encouraging New York City's growth, economic development, and tourism; and

WHEREAS, the City further seeks to encourage New York City's growth, economic development, and tourism through encouraging organizations to stage big events in New York City; and

WHEREAS, the Consultant is uniquely experienced and has demonstrated competence in providing the services required by the Contract; and

WHEREAS, the Consultant's expertise will greatly enhance the City's ability to maintain and develop further interest in the City as an attractive tourism destination, convention site, and location for big events, and to generate revenue and economic development through the use of municipally-owned marketing and licensing resources;

WHEREAS, the Consultant is a private membership organization which shall continue its efforts to expand membership and shall use its best efforts to not reduce funding by members during the Contract Term;

NOW THEREFORE, the parties hereto in consideration of the terms, conditions and covenants set forth herein, agree as follows:

ARTICLE 1
GENERAL PROVISIONS

Section 1.01 Definitions

The following words, as used herein, are defined as follows:

“ACCO” shall mean the Agency Chief Contracting Officer of DSBS (hereinafter defined).

“Business Day” means any day other than a Saturday, Sunday or holiday on which the offices of the City are authorized or obligated by law or executive order to close.

“City Charter” means the Charter of the City.

“Commencement Date” has the definition set forth in Section 1.02 hereof.

“Commissioner” means the Commissioner of DSBS (hereinafter defined), or his or her designee or successor in function within DSBS or its successor agency.

“Comptroller” shall mean the Comptroller of the City.

“Corporation Counsel” means the Corporation Counsel of the City or his or her designee.

“Deputy Commissioner” means the Deputy Commissioner of Administration of DSBS, or his or her designee or successor in function within such agency or its successor agency.

“Deputy Mayor” means the Deputy Mayor for Economic Development of the City, his or her designee or successor in function or such other person as the Mayor may designate.

“Director of Management and Budget” means the Director of OMB (as hereinafter defined) or his or her designee.

“DOI” means the New York City Department of Investigation or its successor agency.

“DSBS” shall mean the New York City Department of Small Business Services or its successor in function.

“Marketing/Licensing Agreements” has the meaning provided in the last paragraph of Section 2.02 hereof.

“Marketing/Licensing Program Personnel” has the meaning provided in Section 6.01(E) hereof.

“Marketing/Licensing Program Revenues” means gross revenues (calculated without any deduction whatsoever) received by the Consultant pursuant to Marketing/Licensing Agreements.

“Marketing/Licensing Projects” shall have the meaning set forth in Section 2.02 hereof.

“Marketing/Licensing Project Budget” shall have the meaning set forth in Section 2.03(B) hereof.

“Marketing/Licensing Services” means the pursuit and implementation of the Marketing/Licensing Projects described in Section 2.02 hereof.

“Mayor” means the Mayor of the City or his or her designee.

“OMB” means the City’s Office of Management and Budget.

“Plan of Expenditures” shall mean the plan of expenditures annexed hereto as Exhibit A. The Plan of Expenditures shall set forth planned expenses during the Contract Term, and the use of Contract Funds (hereinafter defined) and other non-City funds, including, without limitation, the funds disbursed to the Consultant under the Contract during the Contract Term.

“Scope of Services” shall mean the scope of services as set forth in Article 2 of the Contract that the Consultant shall undertake and perform.

“Subconsultant” shall mean any individual(s) or entity, except employees of the Consultant, retained by the Consultant, in accordance with the provisions of the Contract, to assist in the performance of the Scope of Services.

“Tourism Service” shall have the meaning set forth in Section 2.01 hereof.

“Travel Industry” shall mean the markets which convention and visitor bureaus seek to attract in order to sell travel products. Such markets include group tour planners, motorcoach operators, international and domestic wholesalers, travel consortiums, retail travel agencies, convention and meeting planners and tourists.

Section 1.02 Commencement Date

The Consultant shall commence to undertake and perform the Scope of Services on July 1, 2011 (the “Commencement Date”).

Section 1.03 Contract Term

The Consultant shall undertake and perform the Scope of Services for, during and within the term (the “Contract Term”) commencing upon the Commencement Date, and ending, unless earlier terminated pursuant to the provisions of Article 9 or Exhibit B hereof, on June 30, 2016 (the “Termination Date”), except for the obligations that are expressly stated herein to survive beyond the end of the Contract Term or other termination of the Contract (including those obligations set forth in Sections 3.03, 4.01, 4.02, 4.03 and 5.03(B)).

Section 1.04 Extension of Time

Section reserved.

Section 1.05 Complete Work

It is the intent of the parties that the provisions of the Contract shall not be construed so as to limit the Scope of Services, but that the Scope of Services shall include all acts necessary to fully and finally complete the work described in Article 2 hereof and reasonably necessary to promote and encourage tourism in the City. The Consultant shall

schedule and perform the Scope of Services in a manner designed to permit their completion as rapidly as possible.

Section 1.06 Authority of the Deputy Mayor

A. The Scope of Services to be performed by the Consultant shall at all times be subject to the review of the Deputy Mayor as to all matters arising in connection with or relating to performance required of the Consultant pursuant to the Contract. The Deputy Mayor shall have the right to determine the acceptability and fitness of the work and professional services being performed by the Consultant under the Contract. The Deputy Mayor and any other person(s) or agencies duly authorized to act for and on behalf of the City shall not, by virtue of such authority or action, be liable in any manner whatsoever to the Consultant. The Consultant shall make any revisions or corrections to materials to be prepared and furnished pursuant to the Contract as may be required by the Deputy Mayor.

B. The Deputy Mayor's approval of the above-noted material shall be a condition precedent to the right of the Consultant to receive compensation under the Contract. The Deputy Mayor's approval shall not be unreasonably withheld.

Section 1.07 Contract Changes

Changes may be made to the Contract only as duly authorized by the ACCO or his or her designee. If the Consultant deviates from the requirements of an original purchase order or the Contract without a duly approved change order document, or written contract modification or amendment, it does so at its own risk. All such changes, modifications and amendments shall become a part of the original Contract. Any contract change that results in increases which cumulatively exceed the greater of 10 percent of the original contract

amount (or original “not to exceed amount”) or \$100,000, must have the prior written approval of the City Chief Procurement Officer.

Contract changes shall be made only for work necessary to complete the work included in the original Scope of Services of the Contract, and for non-material changes to the Scope of Services of the Contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the ACCO.

The Consultant may be entitled to a price adjustment for extra work performed pursuant to a written change order. Adjustments to price shall be validated for reasonableness using appropriate price and cost analysis.

Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by post audit. If the post-audit reveals that the Consultant's costs were inaccurately stated during negotiations, the agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

ARTICLE 2 **SCOPE OF SERVICES**

Section 2.01 Tourism Services

The Consultant, working in consultation with the City, shall undertake a number of activities designed to promote and encourage tourism in the City (“Tourism Services”). Such activities include, but are not limited to, the following:

A. Conventions: The Consultant shall undertake an active and expanding marketing and sales campaign directed towards encouraging, soliciting and committing professional, trade, social, athletic, cultural and other organizations to hold conventions, meetings and athletic events in the City. The sales campaign shall include, but is not limited to, exhibiting and participating in conventions, meetings and trade shows where special sales opportunities exist. The Consultant agrees to undertake special sales campaigns in major markets and to work closely with the Jacob Javits Convention Center staff and other meeting/convention site staff in order to bring conventions and shows to the City that are designed to bring maximum economic benefits to the City. The Consultant shall also work closely with the City to help advance plans for convention development in the City.

B. Tourism: The Consultant shall develop a sales and marketing program designed to encourage individuals and group visitors to come to the City. The marketing campaign shall include, but is not limited to, working closely with tour operators, travel agents, incentive managers, motor coach operators and other Travel Industry professionals both in the United States and abroad who control large blocks of business, and exhibiting and participating in professional conventions, meetings and trade shows where tourism sales opportunities exist. In addition, the Consultant shall conduct special marketing campaigns in support of its marketing objectives.

C. Working with the Deputy Mayor to develop a plan to assist in the implementation of a consumer-advertising program. Such plan shall include, but is not limited to, focusing on assessment and feasibility, target audience and advertising medium review and appropriate funding sources. In addition, the Consultant shall work with the Deputy Mayor to determine how public and private sector dollars can be leveraged to

supplement existing consumer tourism advertising programs planned at the state and local level and coordinated with the Consultant's programs.

D. Working with not-for-profit corporations and state, national, regional and international tourist organizations in order to promote marketing efforts designed to encourage tourism in the City.

E. Preparing and distributing press releases worldwide on the City and its visitor attractions, in order to attract vacation visitors, convention delegates and business travelers to come to the City.

F. Assisting travel writers and editors, especially those visiting the City, in the development of stories featuring the City.

G. Assisting the media in presenting a fair and accurate representation of the City's tourist attractions in books, documentaries, travel literature and other communication outlets.

H. Assisting the broadcast media by providing information on the City for news stories and scripts.

I. Maintaining an up-to-date photo library of the City's attractions for use by the media and the convention and travel trades.

J. Providing for the preparation and dissemination of tourism information to tourists visiting the City.

K. Working with the Port Authority of New York and New Jersey, the Taxi and Limousine Commission and major tourist attractions in order to create a better tourist and visitor environment in the City.

L. Distributing vacation planning information designed to provide tourists, trade principals and trade shows with information concerning accommodations and services within the City.

M. Preparing a visitor outreach report. Such report shall be prepared in accordance with Section 4.04 hereof. The Consultant agrees that it shall provide answers to mail and telephone inquires from visitors and shall distribute directly or through a contract literature containing information on tourist attractions, historic sites, public events, cultural events, shopping and hotels in the City. In the event that the Consultant determines that any Visitor Information Center should be closed or moved to another location, the Consultant shall obtain the Deputy Mayor's written approval prior to any such change. The Deputy Mayor shall assist the Consultant in its efforts to locate and obtain appropriate, low cost site locations for other Visitor Information Centers.

N. Preparation of a "Marketing Plan." A Marketing Plan for the period of January 1, 2011 to December 31, 2011 (the "2011 Marketing Plan"), which has been approved by the Deputy Mayor, is annexed hereto as Exhibit C. In addition, commencing with November 30, 2011, the Consultant shall submit to the Deputy Mayor, no later than November 30 of each calendar year within the Contract Term, a Marketing Plan for the period of the next calendar year, which shall include, but is not limited to, a market analysis of potential problems and opportunities in the convention and tourism market, a set of general objectives relating the Tourism Services to these market conditions, specific goals to be accomplished, specific strategies as to how to achieve these goals and specific activities the Consultant intends to undertake in order to achieve these goals.

The Consultant shall indicate in the Annual Report required pursuant to Section 4.02 hereof, what efforts were made to meet the goals set forth in each Marketing Plan and whether these goals were met.

The Consultant agrees to seek to ensure that best efforts are used to reach the goals set forth in the Marketing Plans.

O. Developing marketing efforts, which shall support the entire travel and tourism industry in all areas of the City, in order to generate increased positive awareness of the boroughs and neighborhoods. The Consultant shall feature the boroughs and neighborhoods in its publications targeted to conventions and group tour market segments. The Consultant shall also provide consultation with the offices of the borough presidents in the expansion of the borough presidents' existing programs and the development of additional tourism promotional efforts by the offices of the borough presidents and local tourism councils.

P. Creating and executing marketing, advertising and public relations programs designed to stimulate increased domestic and international visitor traffic to the City as the Deputy Mayor may approve from time to time, including, but not limited to specific advertising campaigns in designated markets. Such programs shall target the consumer, convention, trade show, travel agents and group tour markets.

Q. Developing and maintaining in-house design and creative services to support the Consultant's marketing, advertising and promotion obligations under this Contract.

R. Assisting the City in implementing such other tourism development initiatives as the Deputy Mayor and the Consultant shall mutually agree upon.

Section 2.02 Marketing/Licensing Services, Generally

The Consultant, working in consultation with the City, and pursuant to the process set forth in Section 2.03, shall undertake a number of activities designed to promote and encourage New York City's growth, economic development, and tourism, through the use of municipally-owned marketing and licensing resources and the Consultant's marketing expertise ("Marketing/Licensing Services"). In this regard, the Consultant shall serve as the City's marketing and licensing consultant and representative in connection with selected marketing and/or licensing projects (those marketing and/or licensing projects that the Consultant pursues or undertakes, or in which the Consultant participates or is involved, are referred to herein as the "Marketing/Licensing Projects"), and the Consultant shall use its best efforts to assist the City and its agencies to achieve maximum benefits to the City from such Marketing/Licensing Projects. Nothing herein shall prevent the City from using its own employees or retaining any other firm or person in any capacity in connection with such Marketing/Licensing Projects. The Marketing/Licensing Services shall include, but are not limited to, the following:

A. Licensing, for commercial and/or non-commercial use, of City-owned or City-controlled intellectual property, such as trademarks, patents and copyrights, for the purpose of assuring the use of such intellectual property in a manner consistent with the City's interests, including the generation of City revenue.

B. Entering into sponsorship and branding arrangements associating the City with products and/or services, for the purpose of assuring that association of the City with products and/or services is achieved in a manner consistent with the City's interests, including the generation of City revenue.

C. Contracting for the use of City-owned or City-controlled property (for example, Concession Agreements under the rules of the Franchise and Concession Review Committee), for the purpose of assuring that use of such property is conducted in a manner consistent with the City's interests, including the generation of City revenue.

D. Entering into arrangements with non-City entities that are engaged in marketing activities, for the incorporation of City-related content and themes into non-City entity marketing programs, for the purpose of enhancing the City's reputation and image and encouraging City growth, economic development, employment, trade and tourism.

E. Arranging, coordinating and/or facilitating City marketing activities for the purpose of enhancing the City's reputation and image and encouraging City growth, economic development, employment, trade and tourism.

F. Entering into sponsorship or co-branding arrangements with non-City entities in support of or in connection with events occurring at City facilities or otherwise being supported, sponsored or facilitated by the City, for the purpose of assuring that such arrangements are made and implemented in a manner consistent with the City's interests, including the generation of City revenue.

G. Preparing of a "Marketing/Licensing Services Plan." No later than November 30 of each calendar year within the Contract Term, a Marketing/Licensing Services Plan for the period of the next calendar year, which shall include, but is not limited to, an analysis of potential problems and opportunities in Marketing/Licensing Services, a set of general objectives relating to such Services, specific goals to be accomplished, specific strategies as to how to achieve these goals, and specific activities the Consultant

intends to undertake in order to achieve these goals. The Marketing/Licensing Services Plan may be incorporated into the Marketing Plan as set forth in section 2.01(N).

H. Providing to the City, its agents or designees such administrative, financial, legal and other services relating to the Marketing/Licensing Projects as the Deputy Mayor may direct, such as:

- (1) financial analysis of proposed Marketing/Licensing Projects;
- (2) outreach and publicity concerning and in support of Marketing/Licensing Projects;
- (3) preparation of term sheets describing proposed Marketing/Licensing Projects;
- (4) negotiation and drafting of legal documentation for Marketing/Licensing Projects;
- (5) compliance monitoring, enforcement and auditing of agreements entered into in connection with Marketing/Licensing Projects; and
- (6) such other services relating to marketing and/or licensing as the Deputy Mayor may direct.

Subject to the approval of the Deputy Mayor as set forth in Section 2.02(B), such Marketing/Licensing Projects shall be proposed based on their anticipated promotion of the purposes set forth in this Section 2.02. Each Marketing/Licensing Project will be undertaken by the Consultant in coordination with City agencies holding City Charter jurisdiction over such assets or activities as may be involved in such Marketing/Licensing Project, and each Marketing/Licensing Project relating to marketing of the City's image and reputation will be undertaken in coordination with such other appropriate City and/or

non-City entities with responsibility for and/or expertise in economic development, marketing of the City's image and reputation, and promotion of City growth, employment, trade and tourism (entities, in addition to applicable City agencies, which may be appropriate for coordination with respect to particular projects may, without limitation, include the New York City Economic Development Corporation ("EDC") and other local development corporations, applicable business improvement or special assessment districts, event host committees, trade groups, business development and business support groups, convention, tourist and visitors bureaus and other tourism promotion and visitor assistance entities). Licensing agreements entered into by the Consultant pursuant to clause (A) above, sponsorship and branding agreements entered into by the Consultant pursuant to clause (B) and/or clause (F) above, contracts entered into by the Consultant pursuant to (C) above, and agreements entered into by the Consultant pursuant to clause (D) and/or (E) above, shall collectively be referred to in this Contract as the "Marketing/Licensing Agreements." Provision of the Marketing/Licensing Services may also take the form of assisting or representing the City in pursuing, entering into and implementing agreements to which the City, rather than the Consultant, is a party.

Section 2.03 Marketing/Licensing Program Implementation

A. Program Activities: In connection with the Marketing/Licensing Services, subject to the approvals set forth in Section 2.03(B) and any other process or approval required by law, including any process or approval that may be required of the City's Franchise and Concession Review Committee, and consistent with applicable laws, rules and regulations, the Consultant may undertake, and expend Contract Funds

for, certain activities. In addition, prior to undertaking such activities, they shall require the approval of the City directors of the Consultant's corporation as set forth in the corporation's by-laws; provided, however, that the Consultant's board of directors or executive committee, as appropriate, shall approve any Marketing/Licensing Project so approved by the City directors, and shall not approve any Marketing/Licensing Project not so approved by the City directors. The activities that the Consultant may undertake, and expend Contract Funds for, include, without limitation, the following:

(1) negotiating, recommending to the Deputy Mayor the terms of, and implementing Marketing/Licensing Projects;

(2) working with City agencies to identify City-owned or controlled resources useful and available for licensing and marketing and to develop and implement Marketing/Licensing Projects in a manner consistent with agency activities and goals;

(3) facilitating the processing of Marketing/Licensing Agreements through applicable City approval processes;

(4) preparing, or causing or facilitating the preparation of, feasibility and market studies and plans, contract documents, and other material for the purpose of developing proposed Marketing/Licensing Projects and implementing Marketing/Licensing Projects;

(5) acquiring from the City or others, and managing, resources appropriate or necessary to the implementation of Marketing/Licensing Projects;

(6) coordination of Marketing/Licensing Projects with applicable business improvement and special assessment districts, convention, tourism and visitors bureaus and other tourism promotion and visitor assistance organizations, event host committees,

trade groups, business development and business support organizations, and other appropriate entities; and

(7) serving as a representative of the City's interests in the negotiation of Marketing/Licensing Agreements.

B. Approval of Specific Marketing/Licensing Projects: Except as otherwise determined by the Deputy Mayor:

(1) Prior to entering an agreement for a Marketing/Licensing Project, the Consultant shall submit to the City a description of the proposed Marketing/Licensing Project, including an estimated budget for such Marketing/Licensing Project (each such budget for a Marketing/Licensing Project shall be referred to herein as a "Marketing/Licensing Project Budget" and shall reflect, at a minimum, anticipated Marketing/Licensing Program Revenues if any to be generated from such Marketing/Licensing Project and anticipated costs, if any, to the City and the Consultant to be incurred in connection with such Marketing/Licensing Project, in detail satisfactory to the City) a performance schedule, an estimate of staff time to be spent on the Marketing/Licensing Project, and a statement of any fees proposed to be charged by the Consultant. "Costs to be incurred" shall be deemed to include the remittance of royalties, including minimum guarantees, from the licensing of FDNY and NYPD marks to the FDNY Foundation and the Police Foundation, respectively. Copies of said description shall be submitted by the Consultant to the Deputy Mayor, the Commissioner, and the Director of Management and Budget.

(2) The Deputy Mayor shall approve, disapprove or modify a Marketing/Licensing Project proposed by the Consultant promptly after receipt of said

description. Upon approval of a Marketing/Licensing Project by the Deputy Mayor, the above-mentioned description of the Marketing/Licensing Project, with any modifications, shall be furnished (if it has not already been furnished) by the Consultant to the Corporation Counsel. The Consultant shall not expend any Contract Funds for a Marketing/Licensing Project prior to approval of the proposed Marketing/Licensing Project (including the Marketing/Licensing Project Budget and performance schedule therefor) by the Deputy Mayor, issuance of any necessary governmental approvals of such expenditure (including any necessary documentation from OMB), and authorization under the Consultant's applicable corporate procedures. Changes within an approved Marketing/Licensing Project Budget in excess of a 10% change, and any other material change in a Marketing/Licensing Project, must be approved by the Deputy Mayor in the same manner as the original description of the Project was approved. Neither the Marketing/Licensing Project Budget nor any approved change in such budget shall constitute an increase in Contract Funds, except to the extent that a Contract change is made pursuant to Section 1.07.

C. Marketing/Licensing Project Fees: All fees charged by the Consultant in connection with a Marketing/Licensing Project shall be approved by the Deputy Mayor prior to the Consultant's entering into any fee arrangement, except as otherwise provided herein.

D. Payment to City of Marketing/Licensing Program Revenues: Consultant may retain 50 percent of "Net Marketing/Licensing Revenues" (as defined below) as further compensation under the Contract, which Revenues shall be deemed Contract Funds as defined in Section 3.01(A), and shall use them for the performance of the Scope

of Services; provided, however, that Consultant shall retain, annually, the first one million dollars of such revenue, shall remit to the City the second one million dollars of such revenue, and shall retain 50 percent of all such revenue above the second million dollars of Net Marketing/Licensing Revenues accrued in each applicable year. For the purposes of this provision, “Net Marketing/Licensing Revenues” shall mean gross Marketing/Licensing Revenues derived from a given Marketing/Licensing Project minus the direct expenses for that Marketing/Licensing Project, as approved pursuant to Section 2.03(B). Payment to the City of any Net Marketing/Licensing Revenues shall be made within a reasonable time following the end of each City fiscal year, and upon termination or expiration of this Contract.

E. Form of Marketing/Licensing Agreements: All Marketing/Licensing Agreements shall: (i) contain terms and conditions customary in the applicable industry for the applicable type of agreement (unless such terms would be inconsistent with the requirements of this Contract or special needs of the City); (ii) include all provisions required by applicable City, State and federal law (including, without limitation, applicable executive orders of the Mayor); (iii) be assignable to the City; (iv) include a provision requiring cooperation with any audit pursuant to Section 3.03; and (v) not be effective unless and until approved as to form by the Corporation Counsel. After closing of any Marketing/Licensing Agreement, if a variance in the terms of the executed closing documents is necessitated because of an adverse change in the financial condition of the entity with which the Consultant has entered into such Marketing/Licensing Agreement, and said variance materially adversely affects the interests of the Consultant or the City, the Consultant will consult with the Deputy Mayor, the Director of the Office of

Management and Budget and, if and when required by law, the Comptroller, regarding the negotiation of such terms. The Consultant will submit any such variance first to the Deputy Mayor for approval, and then to the Director of Management and Budget and, if and when required by law, the Comptroller. No such agreement containing such variance shall be effective unless and until approved as to form by the Corporation Counsel.

ARTICLE 3
METHODS OF PAYMENT

Section 3.01 Contract Amount

A. In consideration of and in full payment for performance of the Scope of Services by the Consultant, and subject to and in accordance with the provisions of the Contract, the City shall pay to the Consultant an amount in the first year of Contract Term not to exceed Fourteen Million Eight Hundred Sixty-One Thousand Two Hundred and Seventy-Three Dollars (\$14,861,273) and an amount in year two of Contract Term not to exceed Fourteen Million Seven Hundred Fourteen Thousand Five Hundred and Twenty-Six Dollars (\$14,714,526) and an amount in each of the subsequent years of Contract Term not to exceed Fourteen Million Three Hundred Forty-Eight Thousand and Twenty-Eight Dollars (\$14,348,028) (“Contract Funds”).

B. All Contract Funds paid pursuant to the Contract shall be used only for expenses as specifically contained in the Plans of Expenditures, unless reallocated by the Consultant as detailed in the Quarterly Reports, or, if applicable, as specifically contained in an approved Marketing/Licensing Project Budget.

Section 3.02 Schedule of Payments for Contract Funds

A. in the first year of Contract Term: In accordance with each relevant annual Plan of Expenditures and upon approval by the Deputy Mayor of all reports due, payment of the required installment of the Contract Funds to the Consultant shall be due and payable in accordance with the following schedule:

1. Within thirty (30) days of the registration of the Contract with the Comptroller, the City shall pay to the Consultant an amount not to exceed Three Million Seven Hundred Fifteen Thousand Three Hundred and Eighteen Dollars (\$3,715,318) in Contract Funds.

2. On October 2, 2011, the City shall pay to the Consultant an amount not to exceed Three Million Seven Hundred Fifteen Thousand Three Hundred and Eighteen Dollars (\$3,715,318) in Contract Funds..

3. On January 2, 2012, the City shall pay to the Consultant an amount not to exceed Three Million Seven Hundred Fifteen Thousand Three Hundred and Eighteen Dollars (\$3,715,318) in Contract Funds..

4. On May 2, 2012, the City shall pay to the Consultant an amount not to exceed Three Million Seven Hundred Fifteen Thousand Three Hundred and Eighteen Dollars (\$3,715,318) in Contract Funds..

B. In the second year of Contract Term: In accordance with each relevant annual Plan of Expenditures and upon approval by the Deputy Mayor of all reports due, payment of the required installment of the Contract Funds to the Consultant shall be due and payable in accordance with the following schedule:

1. On July 2, 2012, the City shall pay to the Consultant an amount not to exceed Three Million Six Hundred Seventy-Eight Thousand Six Hundred and Thirty-One Dollars (\$3,678,631) in Contract Funds.

2. On October 2, 2012, the City shall pay to the Consultant an amount not to exceed Three Million Six Hundred Seventy-Eight Thousand Six Hundred and Thirty-One Dollars (\$3,678,631) in Contract Funds.

3. On January 2, 2013, the City shall pay to the Consultant an amount not to exceed Three Million Six Hundred Seventy-Eight Thousand Six Hundred and Thirty-One Dollars (\$3,678,631) in Contract Funds.

4. On May 2, 2013, the City shall pay to the Consultant an amount not to exceed Three Million Six Hundred Seventy-Eight Thousand Six Hundred and Thirty-One Dollars (\$3,678,631) in Contract Funds.

C. Subsequent years of Contract Term: In accordance with the applicable, subsequent Plan of Expenditures and upon approval by the Deputy Mayor of all reports due, payment of subsequent annual installments of the Contract Funds to the Consultant shall be due and payable in accordance with the following schedule:

1. On July 2 of the relevant calendar year, the City shall pay to the Consultant an amount not to exceed Three Million Five Hundred Eighty-Seven and Seven Dollars (\$3,587,007) in Contract Funds.

2. On October 2 of that same calendar year, the City shall pay to the Consultant an amount not to exceed Three Million Five Hundred Eighty-Seven and Seven Dollars (\$3,587,007) in Contract Funds.

3. On January 2 of the next calendar year, the City shall pay to the Consultant an amount not to exceed Three Million Five Hundred Eighty-Seven and Seven Dollars (\$3,587,007) in Contract Funds.

4. On April 2 of that same calendar year, the City shall pay to the Consultant an amount not to exceed Three Million Five Hundred Eighty-Seven and Seven Dollars (\$3,587,007) in Contract Funds.

Section 3.03 Audits

All payments made pursuant to the Contract, including payments to Subconsultants pursuant to Sections 6.02 and 6.03, and receipt and payment of Net Marketing/Licensing Revenues pursuant to Section 2.03(D), shall be subject to audit by the Deputy Mayor, the Comptroller, and the City's Office of Management and Budget ("OMB"). If the Deputy Mayor, the Comptroller, or OMB determines that any expenditures or payments made pursuant to the Contract have not been made in accordance with the terms and conditions of the Contract, the City shall be entitled to reimbursement from the Consultant of any or all of the payments so expended. The obligations contained in this Section 3.03 shall specifically survive beyond the end of the Contract Term.

Section 3.04 Member Funding

The Consultant agrees to supplement Contract Funds with member funding, and shall use best efforts to not reduce member funding during the Contract Term.

ARTICLE 4 **REPORTS**

Section 4.01 Quarterly Reports

The Consultant shall submit "Quarterly Reports" with respect to performance of the Scope of Services. Quarterly Reports shall be submitted to the Deputy Mayor no later than September 2, December 2, March 2, and June 2 of each year of the contract. In addition, a Quarterly Report regarding the last quarter of the Contract Term shall be due ninety (90) days following the expiration or sooner termination of this Contract. The requirement regarding the submission of Quarterly Reports shall survive the expiration of the Contract Term. The Quarterly Reports shall consist of:

A. Quarterly Marketing Report: The Quarterly Marketing Report shall contain:

1. A narrative summary of progress and problems with respect to performance of the Scope of Services. This summary shall be consistent with the goals, objectives and strategies of the Marketing Plan as described in Section 2.01(N), and the Marketing/Licensing Services as described in Section 2.02;

2. The monthly "Internal Report" which shall contain such information and shall be in such form as contained in Exhibit E; and

3. Such other information as the Deputy Mayor may request.

B. Quarterly Financial Report: The Quarterly Financial Report shall include a statement of all revenues (Contract Funds, Marketing/Licensing Program Revenues, and other non-City funds) recorded during the quarter, the amount of expenses recorded during the quarter, with a comparison to the Plan of Expenditures and, if applicable, to an approved Marketing/Licensing Project Budget. Such comparison shall include an explanation of any major variance between these figures.

C. Monthly Barometer: The Monthly Barometer shall contain numerical data regarding convention and tourism services in such form as contained in Exhibit F. The Monthly Barometer shall be submitted four (4) months later (e.g., July's Monthly Barometer shall be submitted in November).

Upon receipt of each Quarterly Report, the Deputy Mayor shall determine whether during the previous quarter the Consultant has performed the Scope of Services in a satisfactory manner. If the Deputy Mayor determines that the Consultant's performance has been satisfactory, and approves the update to the information set forth in the Plan of Expenditures supplied by the Consultant in accordance with this Subsection, the Deputy Mayor shall authorize payment to the Consultant pursuant to the provisions set forth in Sections 3.02. No payment shall be due or made pursuant to the Contract absent such authorization by the Deputy Mayor. In addition, the updated information supplied by the Consultant in accordance with this Subsection and approved by the Deputy Mayor shall substitute for the Plan of Expenditures.

Section 4.02 Annual Report

The Consultant shall prepare and submit to the Deputy Mayor the annual report provided to the Consultant's executive committee, board of directors, membership and travel industry leaders (the "Annual Report"). The Annual Report, covering the period of January 1, 2011 to December 31, 2011, shall be submitted by April 15, 2012 or by the date of the Consultant's annual meeting in 2012, whichever is later. Each subsequent annual report shall be submitted by the following April 15 or by the date of the Consultant's following annual meeting, whichever is later. The requirement regarding submission of the Annual Report shall survive the expiration of the Contract Term.

Section 4.03 Financial Statement

On or before April 30, 2012, the Consultant shall submit to the Deputy Mayor and OMB a written Financial Statement, audited by a certified public accountant, for the period of January 1, 2011 to December 31, 2011.

On or before April 30 of each subsequent year of the Contract Term, the Consultant shall submit to the Deputy Mayor and OMB a written Financial Statement, audited by a certified public accountant, for the period of the prior calendar year (including, for calendar year 2011, on or before April 30, 2012).

The obligations contained in this Section 4.03 shall specifically survive beyond the end of the Contract Term.

Section 4.04 Visitor Outreach Report

The Consultant shall prepare an annual evaluation of each Visitor Information Center operated by the Consultant and an evaluation of the Consultant's efforts to prepare and disseminate tourist information within the City as required pursuant to Section 2.01(M) herein (the "Visitor Outreach Report"). The Visitor Outreach Report shall include a summary on each Visitor Information Center, which shall include, but is not limited to: the location of the Visitor Information Center; the space occupied; hours staffed; information distribution systems; numbers of visitors; a breakdown and evaluation of types of inquiries according to source; an evaluation of the effectiveness of the location of the Visitor Information Center; and recommendations for changes, if any, in the operation or location of the Visitor Information Center and the proposed costs for such changes. The Visitor Outreach Report shall also include a description of the Consultant's efforts to disseminate tourist information to tourists while they are visiting the City and a sample list of each of the

types of organizations with which the Consultant works to disseminate tourist information. The Visitor Outreach Report shall be submitted to the Deputy Mayor for review, no later than June 30 of each year of the Contract Term, covering the preceding 12 months.

Section 4.05 List of Publications

The Consultant shall prepare for the Deputy Mayor a list of publications, maps, booklets, calendars, shopping guides, tour package directories, visitors' guides, listings, reference material and any and all other material required by the terms of the Contract and by the City so that tourism may be promoted and encouraged (hereinafter "Publications"). This list shall identify whether the publications are updates of previous guides, and shall contain the number of each publication, description of its purpose and distribution. This list shall be submitted to the Deputy Mayor with the Marketing Plan.

The Consultant shall submit all new publications, audio visual production materials and electronic media materials prepared pursuant to the Contract, including revised publications which contain revisions that are substantive in nature for review during initial preparation and prior to distribution. If the Deputy Mayor does not respond to this request for comment within five (5) business days of submission, his or her approval shall be deemed given.

The Consultant shall supply the Deputy Mayor upon request with a reasonable number of copies of all materials produced by the Consultant within the context of the print run.

Section 4.06 Special Reports

The Consultant shall furnish the Deputy Mayor, within a reasonable time, with any additional reports produced by the Consultant at the Deputy Mayor's request in connection with the Contract.

ARTICLE 5
INTELLECTUAL PROPERTY

Section 5.01 City Rights to Tourism Work Products

Subject to third party dissemination distribution prohibitions, the City shall have the non-exclusive, perpetual, paid-up, worldwide license to use all reports, analysis, Publications, brochures, plans, studies or lists prepared or furnished by the Consultant pursuant to Section 2.01 of the Contract (hereinafter “Tourism Work Products”) to use, copy or distribute the Tourism Work Products in whole, in part, or in modified form, in such manner, for such purpose, and as often as the City may deem advisable without further employment of, permission of, or additional compensation to the Consultant.

Section 5.02 Rights in City Intellectual Property

A. “NYC Materials” will mean any and all intellectual property created, used or prepared in connection with any Marketing/Licensing Project and all other City intellectual property rights currently owned or hereafter created by the Consultant or the City in connection with any Marketing/Licensing Project, including, but not limited to trademarks, service marks, domain names, copyrights, patents, trade names, logos, images and any other material. NYC Materials will also include: (i) any reports, documents, data, photographs, content, text, graphics supplied hereunder by the City; (ii) other materials produced pursuant to this Agreement that may be prepared, created or used in any Marketing/Licensing Project, except as otherwise explicitly stated herein; and (iii) materials created by the Consultant to perform its obligations hereunder. Consultant

shall have the right to use such NYC Materials during the Term of this Agreement solely for the performance of its obligations hereunder and to the extent approved in advance by the City. All NYC Materials will be owned by the City.

B. As between Consultant and the City, the City owns all right, title, and interest in and to (i) the NYC Materials, and (ii) all collateral and derivative works developed, designed or created in connection therewith (which may include advertising, marketing and collateral materials prepared for use in connection with the promotion, sale or marketing of the NYC Materials (collectively, the “Collaborative Materials”). The Collaborative Materials shall be considered “work-made-for-hire,” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Collaborative Materials do not qualify as “work-made-for-hire,” Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Collaborative Materials to the City, free and clear of any liens, claims, or other encumbrances. Consultant shall retain no copyright or intellectual property interest in the Collaborative Materials, and they shall be used by Consultant for no purpose other than performing its obligations hereunder. Consultant agrees to provide all assistance reasonably requested by the City in the establishment, preservation and enforcement of the foregoing rights. Consultant hereby agrees to and does hereby waive the enforcement of all moral rights with respect to the Collaborative Materials, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications by the City;

provided, however, that if any such subsequent modifications affect Consultant's ability to perform hereunder, the City will send written notification prior to making any such subsequent modifications and mutually determine with Consultant how to proceed so that Consultant can perform as set forth herein. At the request of the City, Consultant will obtain a written assignment of rights consistent with the foregoing from all employees or permitted contractors involved in providing the services. Consultant acknowledges that the City may, in its sole discretion, register copyright(s) in the Collaborative Materials with the U.S. Copyright Office, the U.S. Trademark Office or any other government agency authorized to grant copyright or trademark registrations. Consultant shall cooperate with respect to such registrations, and shall provide, upon the City's written request, any further documentation necessary to accomplish such registrations. The City and its affiliates and licensees shall have the sole, exclusive and unlimited right throughout the world to utilize and distribute the Collaborative Materials in any way now known or hereafter developed without additional payment to Consultant. Upon expiration or the termination of this Agreement, and upon the City's written request, Consultant shall promptly return or provide to the City any Collaborative Materials so requested that have been provided to or developed by Consultant hereunder. For purposes of this Agreement, the NYC Materials and the Collaborative Materials shall be collectively referred to as the "NYC Marketing Materials." To the extent that Consultant utilizes any NYC Marketing Materials under the terms of this Agreement, NYC Marketing grants to Consultant during the Term a non-exclusive, royalty free worldwide license to use the NYC Marketing Materials for the purpose of complying with the terms and intent of this Agreement.

C. All goodwill associated with the NYC Marketing Materials is the exclusive property of the City and the Consultant shall take no actions inconsistent with such rights. The Consultant recognizes and acknowledges that the NYC Marketing Materials and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Consultant further recognizes and acknowledges that the NYC Marketing Materials have acquired secondary meaning in the mind of the public. The NYC Marketing Materials shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this Agreement immediately, upon written notice, in the event that any part of the NYC Marketing Materials is used by Consultant in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the NYC Marketing Materials is used by Consultant in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify the Consultant in writing and the City shall have the right to terminate this Agreement immediately upon written notice to the Consultant unless Consultant ceases and halts all such uses within two (2) business days following receipt of such notice.

D. Consultant shall use the NYC Marketing Materials solely for the purpose of performing the Services, and only in the manner specified by the City. Consultant acknowledges and agrees that all use of and goodwill in the NYC Marketing Materials shall inure to the sole benefit of the City. Consultant shall not acquire any rights in the

NYC Marketing Materials by virtue of any use it makes of them or any portion of them. Consultant shall not attempt to register the NYC Marketing Materials alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Consultant use, adopt as its own, or attempt to register any marks, names, designations, or indicia that are the same as or similar to the NYC Marketing Materials.

Section 5.03 Warranties and Indemnification

A. Warranties of Title. The Consultant represents and warrants that the Tourism Work Products and any other work product produced pursuant to this Contract: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do not constitute defamation or invasion of the right of privacy or publicity; and (4) are not an infringement, of any kind, of the rights of any third party. To the extent that the Work Products incorporate any non-original material, the Consultant has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under the Contract, copies of which shall be provided to the City upon execution of the Contract.

B. Intellectual Property Indemnification. The Consultant shall defend, indemnify and hold the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs and expenses, including reasonable attorneys' fees, to which it may be subject because of or related to any claim that any Tourism Work Product, any of the Collaborative Materials, or any other work product produced pursuant to this Contract infringes or violates the copyright, trademark or any other property or personal right of any third party. This indemnification shall survive the termination or expiration of the Contract.

This indemnification provision shall not be limited in any way by the Consultant's obligations to obtain insurance as provided under the Contract.

ARTICLE 6
PERSONNEL, EQUIPMENT AND SUBCONSULTANTS

Section 6.01 Personnel and Equipment

A. The Consultant agrees to employ all personnel as may be required to perform the Scope of Services pursuant to the terms contained in the Plan of Expenditures. The Consultant agrees that it alone is responsible for its personnel's work, compensation, direction and conduct during the performance of the Contract. No Contract Funds in excess of \$150,000 shall be expended for any personnel hired by the Consultant to assist the Consultant in performing the Scope of Services (e.g., if the Consultant hires an employee who is scheduled to earn \$180,000 per year, only \$150,000 in Contract Funds can be expended to cover this salary).

B. There shall be no payments of Contract Funds for honorarium to the Consultant's employees.

C. Consultant shall not change, or materially alter the responsibilities of, the Chief Executive Officer, President, or General Counsel of the Consultant's corporation, without the prior written consent of the Deputy Mayor.

D. The Consultant agrees to secure all equipment necessary to perform the Scope of Services in accordance with Section 6.02 hereof and the terms contained in the Plan of Expenditures.

E. Notwithstanding the provisions of Section 6.01(A), above, the Consultant may make a request to the Deputy Mayor that the City employ, and make available to the

Consultant, certain persons to assist the Consultant in the performance of Marketing/Licensing Services. If the City shall do so, then the Consultant shall reimburse the City for the salaries and fringe benefits of such persons. In addition, the Deputy Mayor may make a request that the Consultant employ, and make available to the City, Marketing/Licensing Program Personnel to perform Marketing/Licensing Services for the City that would constitute non-material changes to the Scope of Services under this Contract. If the Consultant shall do so, then, pursuant to Section 1.07, the City shall provide additional Contract Funds to the Consultant for the salaries and fringe benefits of such persons. For the purposes of this Contract, "Marketing/Licensing Program Personnel" shall mean employees of the Consultant whose salaries are paid in whole or in part from Contract Funds.

F. Notwithstanding the provisions of Section 6.01(D), except to the extent that the Consultant and the City otherwise agree, during the Contract Term (i) the City shall provide work space and equipment for those personnel employed by the Consultant located at City offices and engaged in the City's or the Consultant's activities at no cost to the Consultant, and (ii) the Consultant shall provide work space and equipment for those personnel employed by the City located at the Consultant's offices and engaged in the Consultant's or the City's activities at no cost to the City. Upon termination of this Contract, the equipment supplied by the City shall be returned to the City.

Section 6.02 Subconsultants

A. The Consultant is authorized to enter into agreements with Subconsultants ("Subcontracts") for the provision of services, goods or equipment as required for the performance of the Scope of Services. The Consultant, and not the City, is responsible for

the Subconsultant's work. The Consultant shall follow the following provisions when entering into Subcontracts funded with Contract Funds:

1. Subcontracts for amounts from Five Thousand Dollars (\$5,000) to One Hundred Thousand Dollars (\$100,000) (“Small Purchases”) may be awarded by the Consultant without the prior written approval of, or notice to, the Deputy Mayor, provided that, before entering into a Subcontract for a Small Purchase, the Consultant shall (a) solicit, either orally or in writing, offers from at least three (3) bidders or proposers and (b) award the Subcontract for a Small Purchase to the lowest responsive and responsible bidder or to the responsible proposer whose proposal is the most advantageous to the Consultant and the City. The Consultant shall maintain records of the persons or entities approached and their responses. If the Consultant believes that there is justification for selection for a Small Purchase of a Subconsultant from: a single source without competition or from fewer than three (3) bidders or proposers (“Non-Competitive Process”), then the Consultant shall submit a written notice to the Deputy Mayor and obtain written approval of the proposed Subconsultant by the Deputy Mayor, pursuant to Section 6.02(A)(3), below.

2. Prior to the award of any Subcontract in the amount of One Hundred Thousand Dollars (\$100,000) or more, the Consultant shall select the lowest responsive and responsible bidder from at least three (3) written bids. Alternatively, the Consultant shall select the responsible proposer, from at least three (3) written proposals, whose proposal is determined in writing to be the most advantageous to the Consultant and the City. In the event that proposals are solicited, they shall be evaluated pursuant to criteria—such as capacity to execute the proposal, relevant experience, and cost—determined prior to the solicitation of such proposals. The methods set forth in this paragraph shall each be known

as a "Competitive Process." A Competitive Process shall be used prior to the award of any Subcontract in the amount of \$100,000 or more, unless the Consultant can justify, to the satisfaction of the Deputy Mayor, the use of a Non-Competitive Process.

3. Prior to the award of any Subcontract for a Small Purchase that is to be awarded pursuant to a Non-Competitive Process, or prior to the award of any Subcontract of One Hundred Thousand Dollars (\$100,000) or more, the Consultant shall submit a written notice to the Deputy Mayor and obtain written approval of the Subconsultant by the Deputy Mayor. If the Deputy Mayor denies the Consultant's request for approval, the Consultant shall not enter into the Subcontract utilizing Contract Funds. If the Deputy Mayor does not respond to this request for approval within five (5) business days of submission, his or her approval shall be deemed given.

4. For all Subcontracts for which the Consultant must submit a written notice to the Deputy Mayor, such notice shall include, at a minimum, the following:

- a. the name of the proposed Subconsultant;
- b. the dollar amount of the proposed Subcontract;
- c. a description of the services to be provided or goods supplied by the proposed Subconsultant;
- d. the need for the performance of such services or for the goods to be supplied;
- e. the method of and justification for the selection of the proposed Subconsultant; and
- f. the information required by Section 6.03(C), below.

5. Subcontracts shall not be artificially divided so as to constitute a Small Purchase under this Section 6.02. Changes to and/or renewals of Small Purchases shall not bring the total value of a Subcontract to an amount greater than One Hundred Thousand Dollars (\$100,000).

B. Postage, postage related items such as United Parcel Service, telephone, telegraph and fees related to the Consultant's participation in trade shows and purchase of exhibit space are specifically exempted from Section 6.02(A)(3) herein, requiring notification and prior approval of Subconsultants by the Deputy Mayor.

Section 6.03 Subcontracts

A. Unless waived by the Deputy Mayor (except for paragraph 7, below, which may not be waived), all Subcontracts funded with Contract Funds shall contain the following terms:

1. that there is no privity of contract between the Subconsultant and the City, and that neither the Subconsultant nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of the City by virtue of the Subcontract or by virtue of any approval, permit, license, grant, right or other authorization given by the City or any of its officers, agents or employees;

2. that the City shall incur no liability by virtue of any act, omission, negligence or obligation of the Subconsultant to the Consultant;

3. that nothing in the Subcontract shall impair the rights of the City;

4. that the Subconsultant shall indemnify and hold harmless the City, its agents, employees, officials and officers against any and all claims, judgments or liability due to any act or omission of the Subconsultant, its agents and employees;

5. that all work performed under the Subcontract shall strictly comply with the requirements of the Contract;

6. that payment made pursuant to the Subcontract shall be in accordance with the standards applicable to City contracts for similar work and services;

7. that payment made pursuant to the Subcontract shall be subject to audit, pursuant to Section 3.03, as though the payment were from the City to the Consultant; and

8. a loss of funding provision as set forth in Section 9.02 hereof.

If the Consultant fails to require the inclusion of the provisions set forth in this Section 6.03(A) in any Subcontract or Subconsultant agreements, the Consultant hereby agrees to indemnify and hold harmless the City against any and all claims, damages, awards, judgments, liabilities, expenses and/or fees incurred by or imposed upon the City, including reasonable attorneys' fees, as a result of said failure.

B. After execution of any Subcontract requiring approval by the Deputy Mayor in accordance with Section 6.02(A)(3) herein, the Consultant shall not consent to any modification of such Subcontract, or waive any provisions thereof, without the prior written consent of the Deputy Mayor. The Consultant shall enforce the Subcontract or Subconsultant agreement in accordance with the terms contained therein and herein. The Consultant shall promptly report to the Deputy Mayor any breach by a Subconsultant or Subcontractor of any term or condition of the Subcontract or any deviation from the approved work program.

C. For proposed Subcontracts in excess of One Hundred Thousand Dollars (\$100,000) funded with Contract Funds, the Consultant shall require that its proposed

Subconsultants submit to the Deputy Mayor any and all information which he or she deems necessary in order to comply with Section 6-116.2 of the Administrative Code.

ARTICLE 7 **INSURANCE**

Section 7.01 Agreement to Insure

The Consultant shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Public Liability Insurance

A. The Consultant shall maintain Commercial General Liability Insurance covering the Consultant as Named Insured and the City as an Additional Insured in the amount of at least Five Million Dollars (\$5,000,000) per occurrence. Such insurance shall protect the City and the Consultant from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Consultant shall ensure that each Subconsultant paid by Consultant using Contract Funds adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such Subconsultant under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

Section 7.03 Professional Liability Insurance

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Consultant shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Consultant under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Consultant or anyone employed by the Consultant.

B. All subcontractors of the Consultant providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Consultant shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic

coverage of not less than two (2) years. If available as an option, the Consultant shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance

The Consultant shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Consultant shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Consultant shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Consultant shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City’s limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Consultant as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner [insert

Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Consultant shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Consultant shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and

(b) accompanied by the endorsement in the Consultant's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Consultant shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Consultant from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Consultant receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Consultant shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address],

and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Consultant shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Consultant's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. The Consultant shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. The Consultant's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Consultant or its subcontractors of any liability under this Agreement, nor

shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Consultant waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Consultant and/or its subcontractors in the performance of this Agreement.

E. In the event the Consultant requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Consultant as an additional insured under such insurance, the Consultant shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

Section 7.10 Director's Liability Insurance

The Consultant may obtain director's liability insurance coverage on terms consistent with Section 727 of the New York Not-for-Profit Corporation Law to indemnify and save harmless each director of the Consultant from all liability, claims, or damages by reason of his or her acts or omissions in connection with the performance of his or her duties as a director of the Consultant.

Section 7.11 Alternate Insurance Provisions

Notwithstanding any other provisions of this Article 7, the Deputy Mayor may promulgate alternate schedules that vary the types and amounts of insurance to be maintained by the Consultant due to the nature of the activities undertaken. With respect to

the fidelity bond in Section 7.12 hereof, the Deputy Mayor may require alternate provisions that vary the amount of the bond to be maintained by the Consultant for good cause shown.

Section 7.12 Fidelity Bond

The Consultant shall furnish a fidelity bond in a sum of Five Million Dollars (\$5,000,000) to cover the activities and performance of Consultant's employees and agents, with the City named as a loss payee.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Section 8.01 General

The Consultant represents and warrants that:

A. The Consultant is a not-for-profit corporation duly authorized and organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform the Contract.

B. The execution and delivery of the Contract, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or, to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

**ARTICLE 9
TERMINATION**

Section 9.01 Authority of the Deputy Mayor to Terminate

Articles 17-19 of Exhibit B of this Contract sets forth the authority of the City to terminate the Contract, including for the convenience of the City. In addition to any other

termination provisions of the Contract, if the Deputy Mayor determines that the Consultant has violated or failed for any reason to perform any of the terms, covenants or provisions of the Contract or to progress with the work called for under the Contract in a reasonable manner, or if the Deputy Mayor determines that the conduct of the Consultant is likely to impair or prejudice the interests of the City, the Deputy Mayor may thereupon terminate or suspend the Contract for cause by giving thirty (30) days notice in writing of that fact and the date of such termination to the Consultant. The Contract shall terminate or be suspended on such date, unless the Consultant has cured such defect to the satisfaction of the Deputy Mayor and he or she has approved the continuation of the Contract. In the event of termination, on winding up of the Contract, the City shall be entitled to copies of all Tourism Work Products, as defined in Section 5.01 herein, and any other material produced pursuant to the Contract, and the Consultant shall immediately surrender and deliver to the Deputy Mayor all work products, equipment and other material produced pursuant to the Contract, as the parties shall agree are the property of the City. Any financial obligations incurred under executed agreements by the Consultant in accordance with the Contract prior to the date Consultant receives notice of termination, shall be reimbursable by the City.

The City may thereafter perform the remaining Scope of Services and may progress the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost incurred by the City thereby authorized by law.

No such postponement, delay, suspension, extension or termination shall give rise to any cause of action for damages against the City, DSBS, the Deputy Mayor or any agent or employee of the City. The Deputy Mayor and any other persons or agents authorized to act

for or on behalf of the City shall not, by virtue of such authority or action, be liable in any manner to the Consultant by virtue of such authority or action.

Section 9.02 Loss of Funding

If there shall be a termination or reduction in City appropriations such that monies are not available for purposes of the Contract, then the Deputy Mayor, in addition to any other rights s/he may have under the Contract or existing law, may: (a) give notice to the Consultant that due to a reduction in funding, the amount of Contract Funds set forth in the Plan(s) of Expenditures shall be reduced to the amount of City appropriations now available; and/or (b) give notice to the Consultant specifying that there has been a reduction in City appropriations and state that the Contract shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, and on the date specified in such notice, the Contract shall expire and terminate with the same force and effect as though the date so specified were the original Termination Date set forth in Section 1.03. On such date all rights of the Consultant under the Contract shall expire and terminate and the Consultant shall remain liable for all its obligations incurred prior to the date of such termination.

Section 9.03 Assignment of Contracts Upon Termination

On the termination of this Contract, the Consultant shall transfer, assign and set over to the City any and all of the right, title and interest of the Consultant in and to any Marketing/Licensing Agreements and any and all documentation maintained by the Consultant in connection with such Marketing/Licensing. The Consultant shall enter into such instruments and agreements and take such other action as the City may request in order to fully evidence such transfer and assignment and shall take such action as shall be

required by law or as requested by the City in order to notify all other parties to such agreements of the assignment to the City.

ARTICLE 10
MISCELLANEOUS PROVISIONS

Section 10.01 Maintenance of Records and Right to Audit and Inspect

A. The City shall have the right at all times, with reasonable notice, to inspect the premises, operations and records of the Consultant relating to its performance of the Scope of Services.

B. With specific regard to Marketing/Licensing Services, and not in derogation of the foregoing, such records shall include but not be limited to the following:

- (1) minutes of all meetings of the Board of Directors or any committee thereof;
- (2) copies of significant correspondence, both incoming and outgoing;
- (3) financial documentation such as bank statements, canceled checks, bills and receipts, requests for payment and deposit slips relating to all financial accounts and transactions under this Contract;
- (4) such other records and papers as the Deputy Mayor or the Commissioner in writing may require to be maintained;
- (5) copies of all press releases and other publicity materials generated by the Consultant;
- (6) the receipt of funds by the Consultant from any and all Marketing/Licensing Agreements;
- (7) the use of the funds referred to in the preceding subsection (6).

C. The Consultant shall maintain its financial accounts in accordance with generally accepted accounting principles and in accordance with such standards as are required by the Comptroller and, with regard to federal funds, federal regulations.

D. The Consultant shall maintain all records relating to this Contract as and to the extent required by law and as and to the extent required by the Deputy Mayor.

E. The Deputy Mayor, the Commissioner, and DOI shall have the authority to examine, copy or remove any document prepared, maintained or held by the Consultant in connection with this Contract or the acts to be taken or omitted to be taken by the Consultant in connection herewith, except for those documents that may not be so disclosed according to law.

F. The Consultant agrees that the Comptroller shall have audit authority over the Consultant coextensive with the Comptroller's authority with respect to City agencies under Section 93(b) and (c) of the City Charter.

Section 10.02 Conflict of Interests

A. The Consultant will require the following persons to agree in writing, as a condition of employment or position, as applicable, to be subject to the provisions set forth in Chapter 68 of the City Charter: Directors of the Consultant's corporation who are City employees; the Chief Executive Officer, the President, and other salaried employees of Consultant as may be directed by the City. The Consultant shall consult with and be guided by the New York City Conflicts of Interest Board in connection with the implementation thereof.

B. For the persons covered by Section 10.02(A), above, DOI shall have the authority to require background investigations and annual financial reporting coextensive

with that held by DOI with respect to all other divisions and agencies under their jurisdiction pursuant to Chapter 34 of the City Charter and Mayoral Executive Orders 16 of 1978 and 91 of 1986, as amended.

Section 10.03 Corporation Counsel

A. The identity of all outside counsel retained by the Consultant related to the Marketing/Licensing Services, and the Consultant's fee arrangements with all such outside counsel, shall be subject to approval by the Corporation Counsel.

B. The Consultant shall be entitled to legal representation by the New York City Law Department ("Law Department") with respect to any litigation brought by or against the Consultant with respect to the Marketing/Licensing Services. The Consultant will pay to the Law Department such reasonable fees as the Law Department may charge for such services.

C. The Consultant agrees that Marketing/Licensing Agreements, or, as may be specified by the Corporation Counsel, the general form of such agreements, shall be subject to approval in writing by the Corporation Counsel.

Section 10.04 Liens

If any mechanic's, laborer's, vendor's, material provider's or similar statutory lien arising out of, or connected with, the activities under this Contract of the Consultant or its agents, contractors or employees shall be filed against any property or assets of the City, or if any public improvement lien created or caused or suffered to be created by the Consultant shall be filed against any assets of, or funds appropriated to, the City, then the Consultant promptly shall take and thereafter shall diligently pursue steps calculated to cause the removal of said lien or the appropriate resolution of the claim to which the lien

relates. The City shall be under no obligation to make any payment to the Consultant under this Contract that otherwise would be made from an appropriation against which exists a public improvement lien arising out of, or connected with, the activities hereunder of the Consultant or its agents, contractors or employees, provided that the City shall make such payments to the extent the same are to be used to reduce such lien.

Section 10.05 Authority of Deputy Mayor

The Consultant's services hereunder shall at all times be subject to the review, direction and control of the Deputy Mayor, whose decision shall be final and binding upon the Consultant as to all matters arising in connection with or relating to the performance of the Program. The Deputy Mayor shall have the right to determine the amount, quality, acceptability and fitness of the work being performed by the Consultant under this Contract.

Section 10.06 Clarification and Correction of Contract

It is the intent and understanding of the parties to the Contract that in the event that a provision of Articles 1-10 is contradicted by the provisions of Exhibit B annexed hereto, the language contained in Articles 1-10 shall be controlling.

If the Contract contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Consultant may request a clarification of the same by writing to the Deputy Mayor, whose decision shall be binding upon the parties.

Section 10.07 Consultant Deemed Independent Contractor

Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that, in the performance of the terms, covenants and conditions of the Contract, the Consultant shall not be deemed to be acting as an agent, servant or employee

of the City, but shall be deemed to be an independent contractor performing professional services for the City.

Section 10.08 Consultant Performance Evaluation

A performance evaluation of the Consultant shall be made by the Deputy Mayor following completion of the Contract.

If Consultant receives an unsatisfactory or marginal evaluation, it may be listed in the City's VENDEX Consolidated Caution List. The Consultant shall have an opportunity to comment in writing subsequent to the evaluation.

Section 10.09 Change of Background Investigation Information

The Consultant shall notify the Deputy Mayor, in writing, of any change in the identity of any individual holding a position that is required to file a Principal Questionnaire ("PQ") pursuant to DSBS's Agency Procedures for Background Investigation of Proposed Contractors ("Agency Procedures"), and the Consultant shall cause such individual to complete and file a PQ within thirty (30) days of that individual's assumption of such a position.

The Consultant further agrees to cause any individual of the Consultant, who submitted a PQ in connection with the award of the Contract, to notify the Deputy Mayor, in writing, within thirty (30) days of any change in the information submitted by such individual on the PQ. Failure to comply with the foregoing shall be deemed a breach or violation of a material provision of the Contract.

For purposes of this Section, those persons who shall be required to submit, pursuant to the Mayor's Office of Contracts Vendor's Guide to Vendex (as revised 4/1/04) and as

directed by that Office, PQs on behalf of the Consultant shall be the Chairman of the Board, the President & Chief Executive Officer, and the Chief Financial Officer of the Consultant.

In addition, in the event that there is a change in any of the information filed by the Consultant in the Business Entity questionnaire required pursuant to Agency Procedures, the Consultant shall notify the Deputy Mayor of such change within thirty (30) days of its occurrence.

Section 10.10 Procurement Policy Board Rules

The Contract is subject to the Rules of the Procurement Policy Board ("PPB Rules") of the City effective September 1, 1990, as amended. In the event of a conflict between said Rules and provisions of the Contract, the PPB Rules shall take precedence.

Section 10.11 Notices

Each written notice, demand, request or other communication in connection with the Contract shall be either served in person, with delivery or service acknowledged in writing by the party receiving the same, or deposited in the United States mails, postpaid, and addressed:

- A. to the Consultant at the address hereinbefore set forth;
- B. to the City at the following address: Deputy Mayor for Economic Development and Rebuilding, City Hall, New York, New York 10007;
- C. to OMB at the following address: Office of Management and Budget, 75 Park Place, 9th Floor, New York, New York 10007;
- D. to the ACCO at the following address: New York City Department of Small Business Services, 110 William Street, New York, New York 10038;

E. to the Deputy Commissioner at the following address: New York City Department of Small Business Services, 110 William Street, New York, New York 10038; or to such other address as may be specified by written notice sent in accordance herewith.

Every notice, demand, request, or other communication hereunder shall be deemed to have been given at the time of mailing as aforesaid.

Section 10.12 MacBride Principles

The Consultant specifically agrees to the MacBride Principles attached to the Contract as Exhibit H.

Section 10.13 Completeness

The Contract, including Exhibits A through I herein, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract shall be deemed to exist or to bind either of the parties hereto.

IN WITNESS WHEREOF, the Deputy Mayor, on behalf of the City of New York, and the Consultant have executed the Contract in quintuplicate: three counterparts of which are to remain with the Deputy Mayor; one to be registered with the Comptroller; and the fifth to be delivered to the Consultant.

THE CITY OF NEW YORK

BY: _____
Deputy Mayor for Economic
Development

NYC & COMPANY, INC.

BY: _____
George Fertitta
Chief Executive Officer

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

ACTING CORPORATION COUNSEL

DATE

Bylaws, Contracts and Contacts

In order for the Town of Nantucket to pursue a new public-private partnership model to promote and manage tourism and recreation it will require bylaws and a contract that protects the integrity of their investment and services provided while providing an appropriate level of oversight to the overall activities of the organization.

With the help of other communities that have transitioned into similar public-private enterprises and have taken advantage of 501c3 and 501c6 designations, Acktown has obtained copies of their bylaws and contracts which are available for review should the Board of Selectmen choose to continue studying the benefits of such an organization.

The following organizations and community leaders dedicated their time to our process. Many have offered to contribute to Nantucket's efforts, including visiting with our organizational leadership and the municipality. Acktown would gladly arrange for conference calls and visits as helpful to the move-forward discussion.

Aspen, Colorado

Name:	Role:	Contact information:
Debbie Braun	President and CEO, Aspen Chamber Resort Association	970.920.7140 dbraun@aspenchamber.org

Plymouth, Massachusetts

Name:	Role:	Contact information:
Denis Hanks	Executive Director, Plymouth Area Chamber of Commerce	508.830.1620 denis@plymouthchamber.com

Vail, Colorado

Name:	Role:	Contact information:
Chris Romer	President and CEO, Vail Valley Partnership	970.477.4016 (o) 970.476.6008 (c) cromer@visitvailvalley.com
Stan Zemler	Town Manager, Town of Vail	970.479.2106 SZemler@vailgov.com

Cape Cod, Massachusetts

Name:	Role:	Contact information:
Wendy Northcross	CEO, Cape Cod Chamber of Commerce, Convention and Visitors Bureau	508.362.3225 x 517 wendy@capecodchamber.org

New York, New York

Name:	Role:	Contact information:
George Fertitta	CEO, NYC & Company	212.484.1290 gfertitta@nycgo.com
Rob Goldrich	Senior Policy Advisor, Office of Mayor Michael Bloomberg	rgoldrich@cityhall.nyc.gov
Bryan Grimaldi	Chief Operating Officer & General Counsel, NYC & Company	212.484.5405 bgrimaldi@nycgo.com
Kate Levin	Commissioner, Department of Cultural Affairs	212.513.9319