

MARKETING AND PROMOTION AGREEMENT

This Marketing and Promotion Agreement between the City of Deadwood (hereinafter “City”), its Business Improvement District No. 7, (hereinafter “Bid #7”), and ZCN, LLC, (hereinafter “ZCN”), effective as of the date of the last signature on the signature page, sets forth the terms for which ZCN will provide marketing and promotion for special events, meetings, and conventions to be held in Deadwood, South Dakota, at the Deadwood Mountain Grand Resort and Casino.

1. **Term.** The term of this Agreement shall be ten (10) years, ending on December 31, 2034, unless canceled as described in the sections below.
2. **Purpose.** BID #7 was created for the purpose of funding authorized uses intended to improve the City’s ability to attract visitors who will patronize the local lodging industry.
3. **Scope of Services.** ZCN will provide convention, meeting, and event center sales and marketing services in connection with usage by BID #7 at the Deadwood Mountain Grand Event Center. ZCN will provide a minimum of seventy-five (75) event days each year.
4. **Payment.** Each year in June, BID #7 will set aside for payment to ZCN ninety-five percent (95%) of the collected BID #7 Occupancy Taxes, up to a maximum of three hundred thousand (\$300,000) dollars for operations and up to two hundred thousand (\$250,000) dollars for marketing and promotions of the Deadwood Mountain Grand Event Center. This amount will be calculated from the previous year’s BID #7 Occupancy Taxes and shall be subject to the seventy-five percent (95%) limitation as set forth herein.
5. **Annual Review.** The Parties agree that an Advisory Board consisting of representatives of BID #7, the City, the Deadwood Chamber of Commerce, and ZCN will meet annually to review promotion activities.
6. **Occupancy Tax.** BID #7 agrees to keep the two (\$2.00) dollar per night occupancy tax in effect during the ten (10) year term of this Agreement.
7. **Default by ZCN.** If ZCN fails to provide a minimum of seventy-five (75) event days each year, this Agreement may be cancelled on the next anniversary date, provided that the City and BID #7 give at least six (6) months written notice to ZCN prior to the anniversary date. If ZCN fails to perform or complete any of the covenants, terms, conditions, obligations, or responsibilities contemplated under this Agreement, the City shall no longer be obligated or required to allocate, hypothecate, pledge, or dedicate

future BID #7 funds to the marketing and promotion as contemplated in this Agreement.

8. **Termination of Agreement.** This Agreement provides that the City and BID #7's obligation to make the agreed upon payments is subject to and dependent upon yearly appropriations being made by the City and BID #7 for such purpose. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from City and BID #7 for this purpose. If for any reason the City or BID #7 fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation or law of municipal fund reductions, the City or Bid #7 may terminate this Agreement.

If any laws or ordinances authorizing BID #7 to exist and operate are changed or repealed, or if Business Improvement Districts are not allowed to legally charge an occupancy tax, the City shall have no monetary obligations under this Agreement and this Agreement will automatically terminate. Termination of this agreement for any reason listed herein is not a default by the City or Bid #7 and shall not give rise to a claim against the City or Bid #7.

9. **Governing Law.** This Agreement shall be governed by and shall be construed in accordance with the laws of the State of South Dakota.
10. **Representation and Warranties.** The Parties represent and warranty that they have the express and implied authority to enter into this Agreement and that each shall be fully bound to the covenants, terms, conditions, obligations, and responsibilities contemplated herein to the extent allowed under South Dakota law.
11. **Amendments.** The Parties agree that this Agreement contains the entire agreement of the parties and that no other agreements whether oral or in writing exist. The terms of this Agreement shall only be made in writing and will be effective upon the signature of all Parties.
12. **Severability.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

Dated this _____ day of _____, 2024.

Amber Diers, President
Deadwood BID #7

Dated this _____ day of _____, 2024.

David R. Ruth, Jr., Mayor
City of Deadwood

Attest:

Dated this _____ day of _____, 2024.

Jessica McKeown, Finance Officer
City of Deadwood

Dated this _____ day of _____, 2024.

Dale Morris, Member
ZCN, LLC