



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Approve Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi, and Authorize the City Manager to Execute the Agreement on Behalf of the City of Lodi.

MEETING DATE: August 19, 2009

SUBMITTED BY: Deputy City Manager

RECOMMENDED ACTION: Approve Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi, and further authorize the City Manager to execute the agreement on behalf of the City of Lodi.

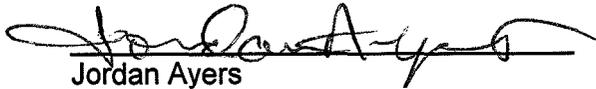
BACKGROUND INFORMATION: In 2004, The Lodi City Council formed the Lodi Tourism Business Improvement District (LTBID) in adopting Ordinance 1753 pursuant to Streets and Highways Code Sections 36500. Ordinance 1753 was codified in Lodi Municipal Code Section 12.07 and later repealed and reenacted by Ordinance 1818. Visit Lodi! administers the funds raised under the LTBID assessments. The City historically provides additional funding for Visit Lodi! programs without a written agreement. In the FY 2009/10 budget, the Council approved funding for Visit Lodi! at a rate of 19 percent of the Transient Occupancy Tax (TOT) collections.

With the attached agreement, which lasts through FY 2013/14, the City agrees to continue providing 19 percent of TOT collections to Visit Lodi! in return for its efforts to market Lodi as a tourist destination and business meeting location. The agreement provides an incentive for Visit Lodi! in that as TOT revenues increase, there is a corresponding increase of city payments to Visit Lodi! under the agreement. The agreement represents best business practices in that it provides accountability for public funds. Services provided by Visit Lodi! include advertising, direct mail marketing, networking at trade shows, producing the annual Taste of Lodi event, producing a variety of publications and providing visitor information. Without this MOU, Council will need to revisit the funding level for Visit Lodi! each budget cycle.

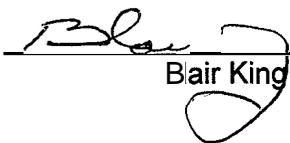
It is the intent of this agreement to replace any prior agreements, clarify the relationship between the parties and foster the continued positive working relationship for the betterment of tourism in Lodi.

FISCAL IMPACT: Funding for Visit Lodi! is expected to generate an unknown amount of additional funding for local merchants and the City as tourism dollars are spent locally.

FUNDING: Funding of \$78,080 included in the 2009/10 budget (100431.8021.1)


Jordan Ayers
Deputy City Manager

Attachment

APPROVED: 
Blair King, City Manager

Memorandum of Understanding
(Visit Lodi! Conference & Visitors Bureau Funding)

THIS Memorandum of Understanding (“Agreement”) is entered into as of this ____ day of _____, 2009, by VISIT LODI! CONFERENCE AND VISITORS BUREAU (“Visit Lodi!”) and the CITY OF LODI, (“City”).

Background

A. The Lodi City Council formed the Lodi Tourism Business Improvement District (LTBID) in adopting Ordinance 1753 pursuant to Streets and Highways Code Sections 36500. Ordinance 1753 was codified in Lodi Municipal Code Section 12.07 and later repealed and reenacted by Ordinance 1818. Visit Lodi! Administers the funds raised under the LTBID assessments. The City has historically provided additional funding for Visit Lodi! programs without a written agreement.

B. It is the intent of this agreement to replace any prior agreements, clarify the relationship between the parties and foster the continued positive working relationship for the betterment of tourism in Lodi.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Funding. The City will provide funding for Visit Lodi! programs laid out in paragraph 2 of this Agreement equal to 19% of the City’s Transient Occupancy Tax (TOT) collections. Payments will be made quarterly in the first 15 days of each quarter based upon the TOT revenue projections made in the applicable year’s adopted budget. If actual revenues exceed budget projections, true-up payments will be made semi-annually in arrears. If actual revenues are lower than budget projections, true-up reductions will be applied to the following quarter’s payments. City Funding shall not be used for any purpose prohibited by law with regard to public dollars including but not limited to political or religious purposes.

2. Visit Lodi! Services: Contract funding will be used to market and sell Lodi as a visitor destination. Scope of services include:

- Advertising
- Direct mail marketing
- Attending leisure travel tradeshow
- Attending group sales shows
- Producing quarterly mailers to group decision makers
- Hold quarterly FAM tours for meeting planners and group decision makers
- Produce annual Taste of Lodi event
- Produce visitor publications including:
 - Visitor guide
 - LodiView (monthly email event calendar)
 - Annual Attraction Map & Guide
 - Meeting Facilities brochure

Maintain visitor website
Fulfill requests for visitor information

3. Annual Reporting/Consultation. Visit Lodi shall account for all expenditures made of funds provided pursuant to this Agreement and shall annually report to the City Council regarding the same. To the extent feasible, the required annual report shall designate those tasks funded by TOT revenue, and shall include performance measures so success can be verified. No less than annually, Visit Lodi shall meet and confer with the City Manager or designee in order to evaluate activities and tasks.

4. No Joint Venture. The parties acknowledge that no joint venture is created by this contract and that no relationship or rights exist between the parties other than those expressly created by this Agreement.

5. Term. The term of this Agreement shall be from July 1, 2009 to June 30, 2014 unless otherwise terminated as provided herein.

6. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

7. Optional Termination. The City may terminate this Agreement without notice if successful efforts to dissolve the LTBID are instituted under the provisions of Streets and Highways Code Sections 36500 and following.

8. Indemnity and Insurance.

a. Indemnification by Visit Lodi!: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, Visit Lodi! ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Visit Lodi!, its personnel, employees, agents, volunteers, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

b. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which

they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

- c. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions-or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

- d. Insurance: During the term of the Agreement, Visit Lodi! must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:
- i. To the extent required by law, worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.
 - ii. Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.
 - iii. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.
 - iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- e. Named Insureds: All policies, except for workers compensation policies, shall name City and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions,

employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

f. Evidence of Insurance: Visit Lodi! shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise Visit Lodi! of any claim or litigation that may result in liability to Visit Lodi!. Visit Lodi! shall immediately advise City of any claim or litigation that may result in liability to City.

g. Cancellation of Policies of Insurance: Visit Lodi!' insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

h. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self-insurance program that complies with all laws and regulations governing self-insurance.

9. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to: City of Lodi
P. O. Box 3006
221 W. Pine Street
Lodi, CA 94240
Fax # (209) 333-6807
Attn: Jordan Ayers

If to VISIT LODI!, to: Visit Lodi! Lodi Conference and Visitors Bureau
115 South School Street, Suite 9
Lodi, California 95240
Fax# (209) 365-1191
Attn: Nancy Beckman

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

11. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

12. Miscellaneous.

- a. Visit Lodi! and City represent that each, respectively, has full right, power, and authority to execute this Agreement.
- b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
- c. This Agreement shall be construed in accordance with the laws of the State of California.
- d. This Agreement supersedes any prior written or oral agreement between the City and Visit Lodi!.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in Section 4 above.

CITY OF LODI, a municipal corporation

VISIT LODI! LODI CONFERENCE
AND VISITORS BUREAU

Blair King, City Manager

Nancy Beckman, Executive Director

Attest:

Randi Johl, J.D., City Clerk

Approved as to Form

D. Stephen Schwabauer, City Attorney

