



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Authorize City Manager to Execute Addendum to Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi

**MEETING DATE:** May 21, 2014

**PREPARED BY:** Deputy City Manager

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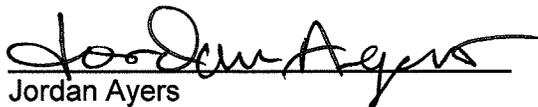
**RECOMMENDED ACTION:** Authorize City Manager to execute Addendum to Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi

**BACKGROUND INFORMATION:** The City and Visit Lodi! Conference and Visitors Bureau (Visit Lodi!) entered into a Memorandum of Understanding (MOU) in 2009 that expires on June 30, 2014. Council indicated to staff during a Shirt-sleeve meeting on April 29, 2014 their desire to extend the term of that MOU for an additional 3 years. The attached addendum accomplishes that desire.

Financial terms remain the same in that the City will provide 19 percent of its Transient Occupancy Tax (TOT) to Visit Lodi!. Additionally, the addendum requires that Visit Lodi! work diligently toward raising their business improvement district fees from three percent (3%) to four and a half percent (4.5%) before the end of the extended term of the MOU.

**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 AVAILABLE:** Funding of \$114,500 is included in FY 2014/15 budget

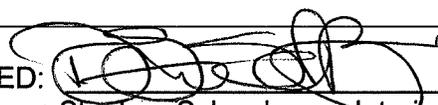
  
Jordan Ayers  
Deputy City Manager

JAV

Attachments

cc: Nancy Beckman

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APPROVED:   
Stephen Schwabauer, Interim City Manager

ADDENDUM TO MEMORANDUM OF UNDERSTANDING  
(VISIT LODI! CONFERENCE & VISITORS BUREAU FUNDING)

THIS ADDENDUM made and effective this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF LODI, a municipal corporation, hereinafter called "CITY", and VISIT LODI! CONFERENCE AND VISITORS BUREAU, hereinafter called ("Visit Lodi!")

WITNESSETH:

1. AGREEMENT: Visit Lodi! and City, entered into a Memorandum of Understanding for funding of the Visit Lodi! Conference & Visitors Bureau on September 4, 2009. Visit Lodi! and City now desire to extend the term of the Agreement.
2. TERM AND TERMS: The term of the Addendum shall be for the period commencing on July 1, 2014 and terminating June 30, 2017. All other terms and conditions, including compensation paid to Visit Lodi!, will remain as set forth in the Memorandum of Understanding, attached hereto as Exhibit A and made a part hereof as though fully set forth herein.
3. Visit Lodi! shall pursue good faith efforts to propose, promote, and attempt to implement a 1.5 percent addition to its current business improvement district (BID) assessment to be in place prior to the expiration of this Addendum.

CITY OF LODI, a municipal corporation

VISIT LODI! LODI CONFERENCE AND  
VISITORS BUREAU

\_\_\_\_\_  
STEPHEN SCHWABAUER  
Interim City Manager

\_\_\_\_\_  
NANCY BECKMAN  
Executive Director

Attest:

\_\_\_\_\_  
RANDI JOHL-OLSON  
City Clerk

Approved as to Form:

\_\_\_\_\_  
JANICE D. MAGDICH  
Interim City Attorney



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

THIS Memorandum of Understanding ("Agreement") is entered into as of this 4<sup>th</sup> day of September, 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 Two Million Dollars (\$2,000,000.00) 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,



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.

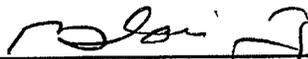
12. Miscellaneous.

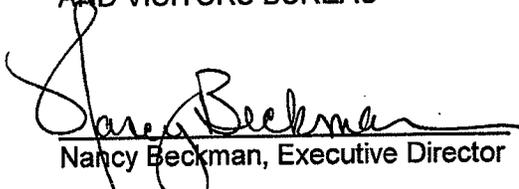
- a. Visit Lodi! and City represent that each, respectively, has full right, power, and authority to execute this Agreement.
- b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations 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!.

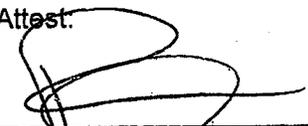
This Agreement was executed as of the date first set forth above and effective as of the date set forth in Section 4 above.

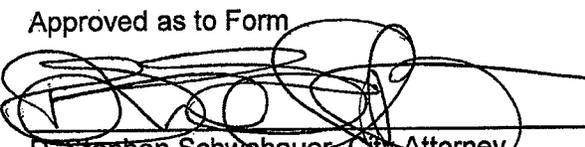
CITY OF LODI, a municipal corporation

VISIT LODI! LODI CONFERENCE  
AND VISITORS BUREAU

  
\_\_\_\_\_  
Blair King, City Manager

  
\_\_\_\_\_  
Nancy Beckman, Executive Director

Attest:  
  
\_\_\_\_\_  
Randi Johi, J.D., City Clerk

Approved as to Form  
  
\_\_\_\_\_  
D. Stephen Schwabauer, City Attorney