

**CITY OF GARDEN GROVE**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew J. Fertal

From: Economic Development

Dept: City Manager

Subject: AGREEMENT BETWEEN THE CITY  
OF GARDEN GROVE AND THE  
ANAHEIM/ORANGE COUNTY  
VISITORS AND CONVENTION BUREAU

Date: February 22, 2011

OBJECTIVE

To obtain City Council approval of an Agreement with the Anaheim/Orange County Visitors and Convention Bureau for the purpose of providing services for the Garden Grove Tourism Improvement District.

BACKGROUND

In 2010, at the request of the Garden Grove hotels along Harbor Boulevard, the City Council established the Garden Grove Tourism Improvement District ("GGTID") to fund collective tourism marketing efforts through the Anaheim/Orange County Visitors and Convention Bureau (VCB) and other activities and improvements that promote tourism in the GGTID area. Commencing December 1, 2010, the City began collecting assessments from the hotels within the GGTID boundaries. The Annual Report prepared by the GGTID Advisory Board and approved by the City Council contemplates that up to 80% of the net GGTID assessment revenues will be allocated to and administered by the VCB pursuant to an agreement with the City. Accordingly, City staff has negotiated the attached proposed Agreement with the VCB.

DISCUSSION

The proposed Agreement is similar to the agreement between the VCB and the City of Anaheim for administration of assessment revenues from the Anaheim Tourism Improvement District. Pertinent provisions of the proposed Agreement include the following:

- 80% of the net GGTID assessment revenues (i.e., 2.0% of the total 2.5% assessment in Tier I and 0.4% of the total 0.5% assessment in Tier II) will be allocated to the VCB; however, in the event the amount of Anaheim Tourism Improvement District assessment revenues allocated to the VCB by the City of Anaheim is reduced in the future, the amount of GGTID assessment revenues allocated to the VCB will also be proportionately reduced.
- The VCB will administer these funds and use them for marketing and promotion of tourism and conventions benefiting the hotels within the GGTID, including marketing the GGTID hotels as part of the "Anaheim Resort District."
- The City is entitled to withhold up to 1% of the GGTID assessment revenues to cover its actual administrative costs.
- \$900,000 of the GGTID assessment revenues allocated to the VCB will be withheld by the City over 10 years to defray the cost of median improvements along Harbor Boulevard north of Chapman Avenue.

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ORANGE COUNTY VISITORS AND CONVENTION BUREAU

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- After 3 years, the City is entitled to begin withholding and retaining up to approximately 25% of the net GGTID assessment otherwise allocable to the VCB for the purpose of funding the development of a transit or transportation system benefiting the Garden Grove hotels. The City of Anaheim is currently allocating 25% of the Anaheim Tourism Improvement District assessment revenues to future transportation improvements, including a potential rail transit system serving the Anaheim hotels in the Anaheim Resort District. This provision will enable Garden Grove to plan for and help fund a potential extension of any such future rail transit system into Garden Grove.
- One seat on the VCB Board of Directors will be reserved for a City employee appointed by the City Manager.
- Three seats on the VCB Board of Directors will be reserved for representatives of the Garden Grove hotels within the GGTID.
- VCB membership dues will be waived for 3 years for Garden Grove hotels within the GGTID.


FINANCIAL IMPACT

It is not anticipated that the City will incur significant direct costs as a result of this Agreement. It is estimated that the GGTID will produce approximately \$2,000,000 annually for local tourism improvement efforts. Pursuant to this Agreement, approximately 80% of this, or \$1,600,000, will be allocated to the VCB for tourism marketing efforts or retained by the City for future Harbor Boulevard median improvements and a future transit system. Any actual administrative costs incurred by the City in relation to this Agreement and the GGTID will be reimbursed through assessment revenues, up to a maximum of 1% of total assessments collected.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached Agreement between the City of Garden Grove and the Anaheim/Orange County Visitors and Convention Bureau for the purpose of providing services for the Garden Grove Tourist Improvement District; and
- Authorize the City Manager to execute the Agreement on behalf of the City; and make changes as appropriate.



Greg Blodgett  
Senior Project Manager

**Recommended for Approval**



**Matthew Ferial**  
City Manager

Attachment: Agreement Between the City of Garden Grove and the Anaheim/Orange  
County Visitors and Convention Bureau

AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND THE  
ANAHEIM/ORANGE COUNTY VISITORS AND CONVENTION BUREAU FOR THE  
PURPOSES OF PROVIDING SERVICES FOR THE GARDEN GROVE TOURISM  
IMPROVEMENT DISTRICT

THIS AGREEMENT, dated for purposes of identification only on this \_\_\_ day of  
\_\_\_\_\_ 2011, is made and entered into by and between the:

CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as  
"CITY,"

AND

ANAHEIM/ORANGE COUNTY VISITOR & CONVENTION BUREAU,  
a nonprofit California corporation, hereinafter referred to as "BUREAU."

WITNESSETH:

WHEREAS, by and through the adoption of Resolution No. 9009-10, adopted August 24, 2010 (the "Resolution of Intention") and Ordinance No. 2782, adopted October 26, 2010 (the "Ordinance"), the Garden Grove City Council ("City Council") has established the Garden Grove Tourism Improvement District ("GGTID"), pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 et seq., (the "Law"); and WHEREAS, pursuant to the Ordinance and the Law, the City Council is authorized to levy annual assessments on visitor accommodation facilities within the GGTID in an amount up to (i) two and one-half percent (2.5%) of the gross rent charged by visitor accommodation facilities located in Tier I of the GGTID and (ii) one-half percent (0.5%) of the gross rent charged by visitor accommodation facilities located in Tier II of the GGTID, in order to fund advertising and marketing efforts designed to increase overnight stays in the GGTID, construction and maintenance of improvements in the GGTID, and other services, activities, and programs that promote and encourage tourism within the GGTID, which will benefit the

operators of visitor accommodation facilities paying assessments through the promotion of scenic, recreational, cultural, and other attractions; and

WHEREAS, in accordance with the Resolution of Intention and Ordinance, the City Council has levied an assessment on visitor accommodation facilities located within the GGTID for fiscal year 2010-2011 in the amount of (i) two and one-half percent (2.5%) of the gross rent charged by visitor accommodation facilities located in Tier I of the GGTID and (ii) one-half percent (0.5%) of the gross rent charged by visitor accommodation facilities located in Tier II of the GGTID; and

WHEREAS, pursuant to the Law and the Ordinance, the City Council is required to annually review the GGTID assessment based on the Annual Report prepared by the GGTID Advisory Board and, so long as it does not receive written protests from visitor accommodation facilities within the GGTID paying fifty percent (50%) or more of the annual assessment, the City Council may levy a GGTID assessment for the following fiscal year; and

WHEREAS, pursuant to the Ordinance, the GGTID is to be administered by the Garden Grove Tourism Promotion Corporation ("GGTPC"), a California nonprofit mutual benefit corporation, which also serves as the GGTID Advisory Board; and

WHEREAS, the area covered by the GGTID is adjacent to the City of Anaheim and is located within that geographic area commonly referred to as the "Anaheim Resort District," and the visitor accommodation facilities within the GGTID will directly benefit from an increase in conventions held at the Anaheim Convention Center and the marketing and promotion of the GGTID as part of the Anaheim Resort District; and

WHEREAS, the City of Anaheim recently formed the Anaheim Tourism Improvement District of 2010 ("ATID") in order to fund (i) the marketing and promotion of tourism and conventions by the BUREAU (the "ATID Marketing Component") and (ii) transportation improvements and activities that facilitate transportation to and within the Anaheim Resort District (the "ATID Transportation Component") from revenues collected by the City of Anaheim from assessments imposed pursuant to the ATID; and

WHEREAS, the City of Anaheim imposes an ATID assessment in the amount of two percent (2.0%) of room rent charged by visitor accommodation facilities, hotels, and motels within the ATID; and

WHEREAS, pursuant to the ATID Management Plan, the ATID assessment revenues collected by the City of Anaheim, net of City administrative costs, are allocated as follows: (i) seventy-five percent (75%) [or 1.5% of the total 2.0% ATID assessment] to the ATID Marketing Component, and (ii) twenty-five percent (25%) [or 0.5% of the total 2.0% ATID assessment] to the ATID Transportation Component; and

WHEREAS, pursuant to the ATID Management Plan, the ATID assessment revenues collected by the City of Anaheim, net of City administrative costs, may, in the future, be reallocated, if certain conditions precedent occur, as follows: (i) seventy percent (70%) [or 1.4% of the total 2.0% ATID assessment] to the ATID Marketing Component, and (ii) thirty percent (30%) [or 0.6% of the total 2.0% ATID assessment] to the ATID Transportation Component; and

WHEREAS, the BUREAU currently administers that portion of the ATID assessment revenues allocated to the ATID Marketing Component and provides tourism and convention marketing and promotion services to the City of Anaheim from such funds; and

WHEREAS, the Ordinance authorizes the City Council to contract with the a separate entity or entity, including the BUREAU, to provide services, improvements and activities funded by the GGTID assessments; and

WHEREAS, CITY and BUREAU mutually desire for BUREAU to provide tourism and marketing services benefitting visitor accommodation facilities within the GGTID to be funded from a portion of the GGTID assessment revenues, in accordance with the terms and provisions of this Agreement; and

WHEREAS, BUREAU possesses the skill, experience, ability, background, and knowledge to provide the services as described in this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. TERM OF AGREEMENT

Subject to the provisions of Section 18, herein, the term of this Agreement shall be for three years from the Effective Date of this Agreement. Thereafter, upon each anniversary of the Effective Date, as defined in Section 25, this Agreement shall be automatically extended for an additional year.

2. SCOPE OF SERVICES

BUREAU shall be responsible for: (1) administering those GGTID assessment revenues transferred to BUREAU pursuant to this Agreement in accordance with the Resolution of Intention, the Ordinance, and each Annual Report of the GGTID Advisory Board, as approved by the City Council (the "Annual Report"); and (2) implementing the convention marketing and promotion component of the Annual Report for the GGTID in consultation with the City and GGTPC. In addition, BUREAU shall perform the following services to promote and encourage visitors to come to the GGTID area of the City of Garden Grove and promote the holding of conventions, conferences and trade shows at the Anaheim Convention Center that will directly benefit assessed visitor accommodation facilities within the boundaries of the GGTID:

A. Records of Potential Users

BUREAU shall maintain accurate and up-to-date records and files in order to be used as the basis for the continuing promotion and sales efforts. Such records and files should be maintained in a manner so as to facilitate the provision of services pursuant to this Agreement.

B. Sales Staff and Support

BUREAU shall maintain experienced and efficient sales staff and supporting staff for sales activity. Such staff shall:

(i) Contact convention and trade show executives, site committees, and other organization representatives to obtain conferences, conventions, and trade shows to

benefit the GGTID visitor accommodation facilities. This effort shall include, but not be limited to, participation in the Meeting Industry Advisory Council, industry events, personal meetings, telephone discussions, correspondence, e-mail communications and all other means which demonstrate a good sales effort.

(ii) Arrange and coordinate on-site inspection trips for convention executives, site committees or other organization representatives which will encompass all elements of the community required by the specific group.

C. Solicitation/Advertisement

As part of its solicitation effort, BUREAU shall:

(i) Prepare and disseminate promotional materials and brochures geared to convention or other organization executives and site decision makers which deal with the convention center, trade shows and GGTID housing facilities and/or services.

(ii) Create and place advertising and exhibition displays promoting the GGTID area as part of the Anaheim Resort District;

(iii) Maintain current active membership in state, national and international convention associations, as appropriate.

(iv) Maintain an active website as well as a web presence by utilizing social media, such as Facebook, My Space and Twitter, so that convention and trade show executives, site committees, and other organization representatives, as well as members of the public can obtain information regarding the GGTID visitor accommodation facilities, the convention center, trade show and housing facilities and/or services.

D. Promotion of Tourism

Bureau shall be responsible to:

(i) Conduct familiarization tours for appropriate tourist industry representatives in order for them to make enlightened recommendations for selecting GGTID visitor accommodation facilities as a tourist/vacationer destination and as part of the Anaheim Resort District.

(ii) Provide information to travel agents and associated groups and individuals in the form of printed material, videos, e-mail communications, and other available media that will promote the advantages of GGTID visitor accommodation facilities, as part of the Anaheim Resort District, as a tourist/vacationer destination.

(iii) Engage in appropriate, effective advertising efforts to promote the advantages of GGTID visitor accommodation facilities, as part of the Anaheim Resort District, as a tourist/vacation destination.

E. Perform any additional services which will insure the success of conventions, trade shows and tourism utilizing the GGTID visitor accommodation facilities, as part of the Anaheim Resort District, which are mutually agreeable and acceptable.

F. Registering and Marketing of Anaheim Resort District

Bureau shall be responsible to:

(i) Cooperate with the City of Anaheim to legally trademark the term "Anaheim Resort District" and in the grant of a no-charge irrevocable license and right for the term of this Agreement to the CITY, the GGTPC, and the visitor accommodation facilities subject to the GGTID assessments to use the term "Anaheim Resort District" in their separate or collective marketing efforts.

(ii) Actively promote the Anaheim Resort District and the GGTID area and visitor accommodation facilities as a part thereof. BUREAU shall ensure that all written and graphic references to and displays of the "Anaheim Resort District" include the GGTID area.

(iii) Include the GGTID area and visitor accommodation facilities in all BUREAU marketing and promotion efforts, without indicating or showing a border or city boundary on any marketing materials.

G. Buy-down Assistance and Rebates

BUREAU shall provide buy-down assistance and rebates to visitor accommodation facilities subject to GGTID assessments in accordance with the Annual Report



and the direction of GGTPC, and on the same basis as such buy-down assistance and rebates are provided to hotels subject to ATID assessments.

3. TIME OF PERFORMANCE

Time is of the essence in the performance of this Agreement and BUREAU shall perform all services to completion in a diligent and timely manner.

4. ANNUAL REPORT

The BUREAU shall annually assist the GGTPC and/or GGTID Advisory Board to prepare and submit to the City an Annual Report in accordance with the Law and the Ordinance.

5. PERFORMANCE STANDARDS

Performance standards shall be updated annually and shall correspond with the BUREAU's approved goals as set by the BUREAU's Board of Directors. These goals shall include; (i) room nights booked and delegate registration as accumulated from hotels/motels in the GGTID area for the prior fiscal year and other available data; (ii) the number of conventions, conferences and trade shows held in the Anaheim Resort District and the County of Orange for the fiscal/annual year; (iii) available Garden Grove tourist data; and (iv) such other matters as City and BUREAU deem appropriate.

6. COMPENSATION

A. Except as otherwise provided herein, CITY shall pay to BUREAU, as full and complete payment for all services performed pursuant to this Agreement by BUREAU, all AOCVCB Marketing Component Funds, defined below, from GGTID assessments collected by the CITY. The AOCVCB Marketing Component Funds provided for in this subsection shall be paid by CITY to the BUREAU within thirty (30) calendar days after AOCVCB Marketing Component Funds are collected by CITY.

B. The term "AOCVCB Marketing Component Funds," as used in this Agreement, shall mean that portion of the GGTID assessment revenues collected by the CITY attributable to (i) two percent (2.0%) of the gross rent charged per room occupancy per night for

all transient occupancies for visitor accommodation facilities within Tier I and (ii) four tenths of one percent (0.4%) of the gross rent charged per room occupancy per night for all transient occupancies for visitor accommodation facilities within Tier II, net of a proportional amount of CITY's actual administrative costs incurred in connection with the GGTID, not to exceed one percent 1% of a proportional amount of the total GGTID assessment revenues collected. The term "AOCVCB Marketing Component Funds," as used in this Agreement, shall include all amounts collected by CITY as interest and fifty percent (50%) of all amounts collected by City as penalties on such proportional amounts, but shall not include amounts collected by CITY that CITY is or becomes obligated to return to any person or entity. In the event the allocation of net ATID assessment revenues collected by the City of Anaheim attributable to the ATID Marketing Component is reduced in the future, the definition of "AOCVCB Marketing Component Funds" in this section shall be revised accordingly to proportionately reduce the portion of the total GGTID assessment amounts included in such definition. For example, if the allocation to the ATID Marketing Component is reduced to seventy percent (70%) [or 1.4% of the current total 2.0% ATID assessment], the definition of "AOCVCB Marketing Component Funds" shall be revised to mean that portion of the GGTID assessment revenues collected by the CITY attributable to (i) 1.87% of the of the gross rent charged per room occupancy per night for all transient occupancies for visitor accommodation facilities within Tier I and (ii) 0.37% of the gross rent charged per room occupancy per night for all transient occupancies for visitor accommodation facilities within Tier II, net of CITY administrative costs as provided above.

C. The parties recognize and understand that the City of Anaheim is currently retaining and allocating funds collected from 0.5% of the total 2.0% ATID assessment to fund transit and transportation improvements and related activities, and that CITY may desire to utilize a portion of the GGTID assessment revenues for similar purposes in the future. Therefore, notwithstanding Subsection 6.A., above, beginning three (3) years from the Effective Date of this Agreement, CITY, in its sole and absolute discretion, may retain and deduct from those AOCVCB Marketing Component Funds otherwise payable to the BUREAU pursuant to

this Agreement that portion of the GGTID assessment revenues collected by the CITY attributable to up to, but not exceeding, (i) one-half of one percent (0.5%) of the gross rent charged per room occupancy per night for all transient occupancies for visitor accommodation facilities within Tier I and (ii) one tenth of one percent (0.1%) of the gross rent charged per room occupancy per night for all transient occupancies for visitor accommodation facilities within Tier II, for the purpose of funding the development of a transit or transportation system benefitting the GGTID visitor accommodation facilities.

D. Commencing December 1, 2011, and continuing through December 1, 2021, CITY shall retain and deduct from those AOCVCB Marketing Component Funds otherwise payable to the BUREAU pursuant to this Agreement, seven thousand five hundred dollars (\$7,500) per month for the purpose of defraying the cost of designing and constructing median improvements on and along Harbor Boulevard within and adjacent to the GGTID area from Chapman Avenue north to the location of the Hampton Inn & Suites, adjacent to the Garden Grove / Anaheim boundary. Landscaping in such median improvements shall be upscale in nature and “Disneyesque” in style and design, comparable to similar median improvements in the City of Anaheim on Harbor Boulevard and Katella Avenue in the immediate vicinity of Anaheim. CITY shall be solely responsible for the design and construction of such improvements, and BUREAU’s sole obligation shall be the contribution of nine hundred thousand dollars (\$900,000) over ten (10) years from that portion of the GGTID assessment revenues allocated to the BUREAU pursuant to this Agreement.

E. BUREAU shall use all funds received pursuant to this Agreement in a manner consistent with the Annual Report and/or as specified in this Agreement. The use by BUREAU of funds received pursuant to this Agreement for any use not authorized in the Resolution of Intention, the Ordinance, or the Annual Report is specifically prohibited. In addition, BUREAU shall be prohibited from using funds received pursuant to this Agreement for any of the following:

- (i) the purchase, acquisition or receipt of any real property without the prior written approval of CITY;
- (ii) any pledge of funds received under this Agreement for the issuance or guarantee of any debt such as, but not limited to the purchase, acquisition or construction of capital assets, without the prior written approval of CITY;
- (iii) payment of any taxes, including California Sales and Use taxes, and Federal and State Income taxes levied as a result of BUREAU activities;
- (iv) charitable contributions and contributions to professional groups, except to the extent any such contributions are made for marketing purposes;
- (v) BUREAU membership orientations, receptions and development;
- (vi) costs related to the generation of advertising revenue in BUREAU Membership Directors and related publications;
- (vii) employee membership dues and subscriptions in organizations not associated with the convention and tourism industry;
- (viii) employee membership dues in private clubs;
- (ix) employee transportation and meals not involved with promotion and solicitation activities or staff training and development (expressly excluded are those travel and entertainment costs associated with promoting the image or reputation of BUREAU); and
- (x) political donations, contributions or other activities.

F. DISESTABLISHMENT

Upon disestablishment of the GGTID, any remaining revenues and assets acquired with AOCVCB Marketing Component Funds, after all outstanding debts are paid, shall be refunded in accordance with this Agreement and the Law.

7. RECORDS AND REPORTS MAINTENANCE AND INSPECTION/AUDIT

A. Records and Reports Maintenance

BUREAU shall establish and maintain financial and performance records with respect to all matters covered by this Agreement in sufficient detail and in a manner sufficient to

conform to generally accepted accounting principles so as to allow audit of the expenditure of GGTID assessment funds received by BUREAU. BUREAU shall retain such financial and performance records for a period of three (3) years.

B. Documentation of Costs

All costs shall be supported by properly executed payrolls, time records for personnel, invoices, agreements or vouchers, or other official documentation evidencing in complete and proper detail the nature and propriety of the charges.

C. Certified Statement

By July 31st of each year during the Term hereof, BUREAU shall furnish to CITY a statement in writing, certified by BUREAU and a Certified Public Accountant to be correct, showing in detail how the funds received pursuant to this Agreement were expended and whether the funds were expended for a purpose authorized by this Agreement.

D. Inspection/Audit

CITY reserves the right to designate its own employee representative(s) or its contracted representatives with a Certified Public Accounting firm who shall have the right to audit BUREAU's accounting procedures and internal controls of BUREAU's financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by CITY or its representative(s) at mutually agreed upon reasonable times and in conformance with generally accepted auditing standards. BUREAU agrees to fully cooperate with any such audit(s).

This right to audit shall extend during the length of this Agreement and for a period of three (3) years, or longer, if required by law, following the date of any payment tendered under this Agreement. BUREAU agrees to retain all necessary records/documentation for the entire length of this audit period.

BUREAU will be notified in writing of any exception taken as a result of an audit. If BUREAU disagrees with any of such exceptions, BUREAU will notify CITY in writing

within twenty (20) days after the notification of exceptions to BUREAU. BUREAU and the City Manager of the City of Garden Grove ("City Manager") will then meet and attempt to resolve any differences. Any expenditure of funds for a purpose not authorized by this Agreement shall be paid to CITY by BUREAU within thirty (30) days from presentation of CITY's findings to BUREAU. If BUREAU fails to make such payment, BUREAU agrees to pay interest, accruing monthly, at a rate of 10% per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date BUREAU reimburses CITY for any exception(s).

8. COORDINATION AND LIAISON

BUREAU and CITY agree that during the term of this Agreement they shall coordinate, as appropriate, all services hereunder with the City Manager or his or her designee.

BUREAU shall appoint one CITY management employee designated by the City Manager as a member of BUREAU's Board of Directors, and shall notify him or her of any and all meetings of such Board.

9. RIGHTS OF GGTID VISITOR ACCOMMODATION FACILITIES

A. Seats on Board of Directors and Executive Committee. BUREAU's Board of Directors shall include no less than three (3) full voting members designated by visitor accommodation facilities within the GGTID area subject to the GGTID assessment (the "GGTID Board Members"). BUREAU's Board of Directors shall consist of no more than 23 total voting members, including the GGTID Board Members. BUREAU shall amend its bylaws, as necessary, to effectuate the addition of the GGTID Board Members as contemplated by this section. In the event BUREAU amends its Bylaws in the future to increase or decrease the number of voting members of the BUREAU Board of Directors, the number of GGTID Board Members shall be increased or decreased accordingly so that the proportion of GGTID Board Members to total full voting members of the BUREAU's Board of Directors remains no less than 3/23.

B. Membership Rights.

(i) All visitor accommodation facilities subject to GGTID assessments shall be eligible for membership with the BUREAU on the same terms as similar facilities subject to the ATID assessment. Notwithstanding the foregoing, BUREAU shall waive all membership dues for visitor accommodation facilities subject to GGTID assessments for a period of three (3) years, commencing December 1, 2010, and shall refund any dues paid by such visitor accommodation facilities prior to the Effective Date of this Agreement for any period after December 1, 2010. Following expiration of this three-year period, membership dues charged by BUREAU to visitor accommodation facilities subject to GGTID assessments shall not exceed membership dues charged to similar facilities subject to the ATID assessment.

(ii) BUREAU shall provide to visitor accommodation facilities subject to the GGTID assessment the same services as BUREAU provides to similar facilities subject to the ATID assessment, including access to the "Passkey" online reservation system and other housing-related services, upon the same terms and conditions and at the same costs and fees.

10. ASSIGNABILITY

BUREAU shall not assign or otherwise transfer any of its rights or obligations whatsoever in this Agreement without the prior written consent of CITY acting by and through the City Manager. Any attempt by BUREAU to assign or transfer any of its rights or obligations hereunder without such prior written consent of CITY shall be void.

11. SUBCONTRACTORS

BUREAU shall have the right, without the City Manager's prior consent, (i) to enter into subcontracts for the performance of routine services not involving its primary duties of convention and tourism marketing such as, but not limited to, printing and computer services, and (ii) to enter into subcontracts for the performance of any services to be rendered outside of the United States.

All subcontractors shall be subject to all of the terms and conditions of this Agreement. BUREAU shall monitor and supervise any subcontractors and shall be responsible to CITY for the acts and omissions of such contractors and their officers, employees and agents.

12. COPYRIGHTS

If this Agreement results in any publication, in any form, which may be copyrighted, the author is free to copyright the work, but CITY reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use and may authorize others, subject to the prior written approval of BUREAU, to use such materials for use in connection with official CITY programs or activities.

13. PERSONNEL AND SERVICES

All services required herein will be performed by BUREAU under the supervision of its President and Chief Executive Officer and its Board of Directors (including the Executive Committee of the Board), unless subcontracted out in accordance with Paragraph 10 above.

14. INDEMNIFICATION

As respects acts, errors or omissions in the performance of professional services, BUREAU agrees to indemnify and hold harmless CITY, its officers, agents, employees, representatives and volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of BUREAU's negligent acts, errors or omissions in the performance of professional services under the terms of this Agreement.

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, BUREAU agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with



BUREAU's (or BUREAU's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; excepting those which arise out of the sole negligence of CITY.

15. NO WAIVER OF RIGHTS

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

16. INSURANCE

Without limiting CITY's right to indemnification, BUREAU agrees to secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

Workers' Compensation Insurance, as required by California statutes;

Comprehensive General Liability Insurance, or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage (if applicable) and Independent Contractors' Liability (if applicable), in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

All Risk (not including earthquake and flood) Property coverage on BUREAU's betterment and improvements.

Each insurance policy required by this Agreement shall contain the following clauses:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days' prior written notice has been given to CITY by delivery of said written notice to the City Clerk, City of Garden Grove, 11222 Acacia Parkway, Garden Grove, CA 92840."

"It is agreed that any insurance or self-insurance maintained by the CITY shall apply in excess of and not contribute with insurance provided by this policy."

Each insurance policy required by this Agreement, excepting policies for workers' compensation and professional liability, if any, shall contain the following clause:

*"The City of Garden Grove, and its officers, agents, employees, representatives and volunteers are added as additional insureds as respects the named insured, operations and activities of, or on behalf of performed under contract with the City of Garden Grove."*

In addition to any other remedies CITY may have if BUREAU fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option, after giving BUREAU written notice at least twenty days (20) days prior thereto:

A. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

B. Order BUREAU to stop work under this Agreement and/or withhold any payment(s) which become due to BUREAU hereunder until BUREAU demonstrates compliance with the requirements hereof;

C. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for BUREAU's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which BUREAU may be held responsible for payments of damages to persons or property resulting from BUREAU's or its subcontractor's performance of the work covered under this Agreement.

Insurance coverage specified herein constitutes the minimum requirements and those requirements do not lessen or limit the liability of BUREAU under this Agreement. BUREAU shall obtain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

The CITY's City Manager is hereby authorized to reduce the requirements set forth in this Section in the event the City Manager determines that such reduction is in the CITY's best interest.

Prior to commencing any work under this Agreement, the BUREAU shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also within thirty (30) days of the execution date of this Agreement, BUREAU shall provide to CITY endorsements to the above required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by CITY, it shall be BUREAU's responsibility to see that CITY receives documentation acceptable to CITY, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company.

Also, CITY has the right to demand, and receive within a reasonable time period, copies of any insurance policies required under this Agreement.

17. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or to any other person shall be in writing and either served personally or sent by pre-paid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed as follows:

IF TO BUREAU: Anaheim Visitors & Conv. Bureau  
800 W. Katella Avenue  
Garden Grove, CA 92802  
Attn: President of Bureau

IF TO CITY: City Manager  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed given within three (3) days after the date of mailing if mailed as provided in this Section.

18. TERMINATION

A. In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of thirty (30) calendar days, or if more than thirty (30) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within thirty (30) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

B. Either party may terminate this Agreement without cause upon giving the other party at least one hundred and eighty (180) days' prior written notice.

C. If the GGTID is disestablished or the City Council does not levy a GGTID assessment in any year in compliance with Section 6 herein, either party may terminate this Agreement without cause upon giving the other party at least seven (7) days' prior written notice. Nothing in this Agreement shall be construed to require the City Council to levy an assessment in compliance with Section 6 herein or to otherwise be construed to bind any future City Council to any particular action.

19. INDEPENDENT CONTRACTOR

The performance of BUREAU's services hereunder shall be in the capacity of an independent contractor and not as an officer, agent, or employee of CITY. In consideration for the compensation paid to BUREAU by CITY, BUREAU agrees that CITY shall not be liable or responsible for any benefits, including, but not limited to, worker's compensation, disability, retirement, life, unemployment, health or any other benefits and BUREAU agrees that it shall not

sue or file a claim, petition or application therefore against CITY or any of its officers, employees, agents, representatives or sureties.

20. NO THIRD PARTY RIGHTS

Except as to those provisions expressly benefitting visitor accommodation facilities subject to GGTID assessments, the parties intend not to create rights in, or to grant remedies to, any other third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established herein.

21. CONFIDENTIALITY OF INFORMATION

BUREAU understands and agrees that certain types of information obtained and possessed by CITY, including certain tax and business data, are confidential and may not be shared with third parties, including individual BUREAU members. In CITY's sole discretion, CITY may withhold certain confidential information from BUREAU. To the extent CITY provides BUREAU with information in connection with this Agreement that CITY identifies as confidential, BUREAU shall take all reasonable actions necessary to maintain the confidentiality of such information and shall use and share such information only as authorized in writing by CITY. In addition to the foregoing, notwithstanding any other law or provision in this Agreement, all information provided by CITY to BUREAU in connection with this Agreement, including, but not limited to, all tax and business data, is for the sole use of BUREAU in connection with providing the services contemplated by this Agreement. BUREAU shall not release any such information to any third party, without the prior written consent of CITY.

22. ENTIRE AGREEMENT

This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all oral or written representations or written agreements which may have been entered into between the parties. No modification or revision shall be of any force or effect, unless the same is in writing and executed by the parties hereto.

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are

intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions which are equivalent from an economic point of view to replace any provision which is determined to be invalid.

23. LAWS GOVERNING CONSTRUCTION OF TERMS

This agreement shall be governed by the laws of the State of California. If any portion of this Agreement is held invalid under any applicable statute or rule of law, then such portion only shall be deemed invalid.

24. FORCE MAJEURE

No party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than obligations to make payments for bills rendered pursuant to this Agreement) when a failure of performance shall be due to uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligations, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities, restraint by court order or public authority and action or non-action by or inability to obtain the necessary authorization or approvals from any governmental agency or authority, which by the exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome.

25. AUTHORITY AND EFFECTIVE DATE

BUREAU and BUREAU's signators represent that the signators hold the positions set forth below their signatures and that the signators are authorized to execute this Amended and Restated Agreement on behalf of BUREAU and to bind BUREAU hereto ("Effective Date").

CITY and CITY's signators represent that the signators hold the positions set forth below their signatures and that the signators are authorized to execute this Amended and Restated Agreement on behalf of CITY and to bind CITY hereto.

The effective date of this Agreement shall be the latest date of execution hereinafter set forth opposite the names of the signators hereto ("Effective Date"). In the event BUREAU fails to set forth a date of execution opposite the name(s) of BUREAU's signator(s), BUREAU hereby authorizes CITY, by and through its representative, to insert the date of execution by BUREAU's signator(s) as the date said Agreement, as executed by BUREAU, is received by CITY.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

"BUREAU"

ANAHEIM/ORANGE COUNTY VISITOR &  
CONVENTION BUREAU,  
a California nonprofit corporation

DATE OF EXECUTION:

\_\_\_\_\_

By



Printed Name Charles Ahlers

Title President/CEO

"CITY"

CITY OF GARDEN GROVE,  
a municipal corporation

DATE OF EXECUTION:

\_\_\_\_\_

By

Matthew J. Fertal, City Manager

ATTEST:

\_\_\_\_\_  
Kathy Bailor, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas F. Nixon, City Attorney

Date 2/14/11