

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
GARDEN GROVE TOURISM
PROMOTION CORPORATION

Date: September 27, 2011

OBJECTIVE

To receive City Council approval of an Agreement with the Garden Grove Tourism Promotion Corporation for management and administration of the Garden Grove Tourist 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. The City began collecting assessments from the hotels within the GGTID boundaries effective December 1, 2010.

On February 22, 2011, the City Council approved an Agreement with the VCB, pursuant to which approximately 80 percent of the GGTID assessment revenue collected is allocated to the VCB to fund collective tourism marketing efforts.

DISCUSSION

Ordinance No. 2782 provides that the GGTID be administered and managed by the GGTPC. A formal Agreement is necessary to clearly define the role and duties of the GGTPC and to establish the parameters for its use of GGTID assessment revenues transferred to it.

The proposed Agreement between the City and GGTPC is attached. Pertinent provisions of the proposed Agreement include the following:

- The approximately 20 percent of the net GGTID assessment revenues not otherwise allocated to the VCB will be allocated and transferred to the GGTPC to use for funding GGTID improvements and activities.

The GGTPC may only use these funds for GGTID purposes authorized by the City Council in the annual report.

- The GGTPC is also required to:
 - Administer the day-to-day operations of the GGTID in consultation with the City; and
 - Oversee the implementation of the VCB Agreement in consultation with the City.
- The City is entitled to up to three percent (3%) of the GGTID assessment revenues to cover its actual administrative costs.
- The GGTPC is required to obtain insurance and to require all of its subcontractors to procure insurance meeting certain minimum requirements and naming the City as an additional insured.
- One ex-officio seat on the GGTPC Board of Directors will be reserved for a City employee designated by the City Manager.

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 two million one hundred thousand dollars (\$2,100,000) annually for local tourism improvement efforts. Pursuant to the proposed Agreement, approximately 20 percent of this, or four hundred twenty thousand dollars (\$420,000), will be allocated to the GGTPC for funding GGTID improvements and activities and administration of the GGTID. 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 three percent (3%) of total assessments collected.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached Agreement between the City of Garden Grove and the Garden Grove Tourism Promotion Corporation (GGTPC) for management and administration of the Garden Grove Tourism Improvement District (GGTID).
- Authorize the City Manager to execute the Agreement, including any modifications thereto, on behalf of the City.

AGREEMENT BETWEEN THE CITY
AND THE GARDEN GROVE TOURISM
PROMOTION CORPORATION
September 27, 2011
Page 3



GREG BLODGETT
Senior Project Manager

Attachment: Agreement

mm(h:Staff/GBI/GGTPC Agreement sr 092711v1.doc)

Recommended for Approval



Matthew Ferial
City Manager

AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND THE GARDEN GROVE
TOURISM PROMOTION CORPORATION FOR THE MANAGEMENT AND
ADMINISTRATION OF THE GARDEN GROVE TOURISM IMPROVEMENT DISTRICT

THIS AGREEMENT is made and entered into to be effective this 1st day of July,
2011 ("Effective Date") by and between the:

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

A
N
D

GARDEN GROVE TOURISM PROMOTION CORPORATION,
a California nonprofit mutual benefit corporation,
hereinafter referred to as "GGTPC."

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 years 2010-2011 and 2011-2012 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 GGTPC, which also serves as the GGTID Advisory Board; and

WHEREAS, the Ordinance authorizes the City Council to contract with GGTPC to provide and administer improvements and activities funded by the GGTID assessments; and

WHEREAS, on or about February 22, 2011, the City Council entered into a contract with the Anaheim/Orange County Visitors and Convention Bureau ("BUREAU") for the purposes of providing certain services for the GGTID (the "BUREAU Contract"); and

WHEREAS, CITY and GGTPC mutually desire for GGTPC to administer the day-to-day activities of the GGTID and the annual GGTID assessment revenues for the benefit of the visitor accommodation facilities within the GGTID, in accordance with the terms and provisions of 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

A. Initial Term. The term of this Agreement shall be from July 1, 2011 through June 30, 2012, inclusive, unless earlier terminated in accordance with this Agreement.

B. Automatic Renewal. Approval by the City Council of the Annual Report (defined in Section 2, hereof), including the proposed GGTID budget, and levy of an annual assessment for each subsequent fiscal year shall automatically renew this Agreement with respect to such fiscal year, subject to the termination in accordance with Section 17 of this Agreement.

2. SCOPE OF SERVICES

GGTPC shall: (1) administer the day-to-day operations of the GGTID in consultation with and pursuant to the direction of the CITY; (2) oversee the BUREAU Contract in consultation with the CITY; (3) administer and use those GGTID assessment revenues transferred to GGTPC 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 (4) prepare and submit an Annual Report pursuant to Section 3, below.

3. ANNUAL REPORT AND BUDGET

A. Except as provided in subsection B below, on or before May 1 of each calendar year, GGTPC shall cause its Board of Directors, acting as the GGTID Advisory Board, to prepare and submit to CITY, on a form approved by CITY, an Annual Report in accordance with the Law and the Ordinance setting forth (1) a summary of the activities and improvements funded by the GGTID assessments during the current fiscal year; (2) the proposed improvements and activities for the GGTID during the ensuing fiscal year commencing on July 1st; (3) the proposed amount of the GGTID assessment for the ensuing fiscal year; (4) all other information

required by the Law; and (5) the proposed budget for the GGTID for the ensuing fiscal year, which shall list the proposed expenditures and the amount designated for each proposed improvement or activity in such detail as required by CITY.

B. In any year when the GGTPC Board of Directors, acting as the GGTID Advisory Board, proposes that the City Council increase the GGTID assessments, modify the boundaries of the GGTID or any assessment zones within the GGTID, modify the basis and method of levying the GGTID assessments, and/or modify the improvements or activities to be funded by the GGTID assessments, the Annual Report shall be submitted before February 1 of the calendar preceding the start of the ensuing fiscal year.

C. Compliance with Brown Act. Whenever the GGTPC Board of Directors is acting in the capacity of the GGTID Advisory Board in approving an Annual Report pursuant to Section 3.A above or proposing modifications to the GGTID pursuant to Section 3.B above, the Advisory Board shall comply with the "Open Meeting" provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq., including, but not limited to, statutory requirements pertaining to public notice, agendas and the public's right to attend and speak. City agrees to assist the Advisory Board in complying with such requirements.

4. TIME OF PERFORMANCE

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

5. COLLECTION OF ASSESSMENTS

GGTPC understands and agrees that the levy of assessments by the CITY shall be in the sole discretion of the City Council. No provision of this Agreement shall be construed as a promise, warranty or agreement by the CITY to levy assessments against visitor accommodation facilities within the GGTID. The CITY shall have no liability to GGTPC for its decision to not levy assessments or in connection with the amounts of any assessments levied. GGTPC understands and agrees that the Ordinance may be amended from time to time by the City Council.

6. DISBURSEMENT AND USE OF FUNDS

A. Except as otherwise provided herein, so long as GGTPC is not in breach of this Agreement, CITY shall disburse all GGTPC Funds, defined below, from GGTID assessments collected by the CITY. Disbursements of such GGTID assessments shall be made to GGTPC within thirty (30) calendar days after collection by CITY or as otherwise mutually agreed in writing by the parties' authorized representatives.

B. The term "GGTPC Funds," as used in this Agreement, shall mean that portion of the GGTID assessment revenues collected by the CITY, commencing Fiscal Year 2010-2011, which are not deemed "AOCVCB Marketing Component Funds" pursuant to the BUREAU Contract. The term "GGTPC 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 (1) amounts collected by CITY that CITY is or becomes obligated to return to any person or entity or (2) those GGTID assessment revenues retained by CITY to reimburse CITY for CITY's actual administrative costs pursuant to the BUREAU Contract. GGTPC shall not be responsible for payment of any GGTID assessment revenues to BUREAU pursuant to the BUREAU Contract.

C. Notwithstanding the foregoing, CITY shall be entitled to retain and deduct a portion of the GGTPC Funds otherwise payable to GGTPC pursuant to this Agreement to reimburse CITY for CITY's actual administrative costs incurred in connection with the GGTID in excess of those costs for which CITY receives reimbursement pursuant to the BUREAU Contract. Notwithstanding the foregoing, the amount retained by CITY shall not exceed three percent (3%) of the GGTPC Funds.

D. GGTPC shall use all funds received pursuant to this Agreement to fund GGTID improvements and activities and administration of the GGTID, including reasonable administrative, insurance, legal, accounting, and auditing costs incurred by GGTPC in connection therewith. GGTPC may expend any funds received pursuant to this Agreement only for the purposes authorized by the Resolution of Intention and the Ordinance and only in

accordance with the Annual Report and budget approved by the City Council for the applicable fiscal year. The use by GGTPC 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, GGTPC 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) charitable contributions and contributions to professional groups, except to the extent any such contributions are made for marketing purposes in furtherance of the purposes of the GGTID;
- (iv) employee, officer, or director membership dues and subscriptions in organizations not associated with the convention and tourism industry;
- (v) employee, officer, or director membership dues in private clubs;
- (vi) employee transportation and meals not directly associated with the administration or operation of the GGTID; and
- (vii) political donations, contributions or other activities.

E. GGTPC acknowledges and agrees that some uses of the public funds collected through the GGTID assessment process (such as the construction of certain public improvements) may require that the CITY, rather than GGTPC, pay for and/or be the contracting party. In those circumstances where GGTPC Funds are allocated for such uses, CITY shall be entitled to retain, or require GGTPC to return to CITY, such portions of the GGTPC Funds. GGTPC shall consult regularly with CITY regarding the use and expenditure of GGTPC Funds to ensure compliance with all necessary legal requirements applicable to the expenditure of public funds.

F. The parties acknowledge and agree that those GGTID assessment revenues not allocated to either the BUREAU or GGTPC and retained by CITY shall be used, in CITY's reasonable discretion, to provide services, activities, and/or improvements within the GGTID boundaries that benefit the visitor accommodation facilities subject to the GGTID assessments.

G. Upon disestablishment of the GGTID, any remaining revenues and assets acquired with GGTID assessment revenues transferred to GGTPC, after all outstanding debts are paid, shall be returned to CITY to be refunded in accordance with this Agreement and the Law.

7. RECORDS AND REPORTS MAINTENANCE AND INSPECTION/AUDIT

A. Records and Reports Maintenance

GGTPC shall establish and maintain an adequate accounting system in accordance with generally accepted accounting principles and standards and shall prepare and maintain financial and performance records with respect to all matters covered by this Agreement in sufficient detail and in a manner sufficient to allow audit of the expenditure of GGTID assessment revenues received by GGTPC. GGTPC shall retain such financial and performance records for such period(s) as CITY retains similar records pursuant to CITY's records retention schedule, but in no event less than of five (5) years. GGTPC shall promptly provide CITY with copies of such records upon demand.

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

On or before September 30th of each year during the Term hereof, GGTPC shall furnish to CITY a statement in writing, certified by GGTPC and a Certified Public Accountant to

be correct, showing in detail how the funds received by GGTPC pursuant to this Agreement were expended and whether such funds were expended for purposes 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 GGTPC's accounting procedures and internal controls of GGTPC'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. GGTPC 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. GGTPC agrees to retain all necessary records/documentation for the entire length of this audit period or the period specified in Subsection 7.A., above, whichever is longer.

GGTPC will be notified in writing of any exception taken as a result of an audit. If GGTPC disagrees with any of such exceptions, GGTPC will notify CITY in writing within twenty (20) days after the notification of exceptions to GGTPC. GGTPC 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 GGTPC from insurance or other non-assessment funds within ninety (90) days from presentation of CITY's findings to GGTPC. If GGTPC fails to make such payment, GGTPC agrees to pay interest, accruing monthly, at a rate of 10% per annum. Interest will be computed from the date of written notification of exception(s) to the date GGTPC reimburses CITY for any exception(s).

8. COORDINATION AND LIAISON

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

GGTPC shall appoint one CITY management employee designated by the City Manager as a non-voting ex-officio member of GGTPC's Board of Directors and shall notify him or her at least five (5) days in advance of the date, time and location of any and all meetings of the Board of Directors.

9. ASSIGNABILITY

GGTPC 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 GGTPC to assign or transfer any of its rights or obligations hereunder without such prior written consent of CITY shall be void.

10. SUBCONTRACTORS

Except with respect to contracts required by law to be entered into by the CITY (such as certain contracts for the construction of public improvements), GGTPC shall have the right to enter into contracts and/or subcontracts for the performance of services in furtherance of the purposes of the GGTID. Notwithstanding the foregoing, prior to entering into any contract for the design or construction of physical improvements funded in whole or in part with GGTID assessment revenues, GGTPC shall consult with the City Manager, or his or her designee, to determine whether CITY, rather than GGTPC, should be the contracting party, or whether the agreement(s) between GGTPC and its contractor(s) and/or subcontractor(s) should contain specific terms necessary to ensure compliance with all legal requirements applicable to expenditures of public funds.

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

Unless otherwise waived or modified in writing by the City Manager, GGTPC shall require all contractors and subcontractors to indemnify, defend, hold harmless GGTPC, CITY, and the Garden Grove Agency for Community Development ("AGENCY"), and their respective council members, directors, officers, employees, volunteers, and agents 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 the acts, errors or omissions of the contractor or subcontractor or its officers, directors, employees or agents in the performance of the contract or subcontract.

Unless otherwise waived or modified in writing by the City Manager, GGTPC shall also require all contractors and subcontractors to procure and maintain insurance in accordance with at least the minimum requirements set forth in Exhibit "A" attached hereto.

GGTPC, and not CITY, shall be responsible for ensuring the requirements of this Section are met.

11. 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 GGTPC, to use such materials for use in connection with official CITY programs or activities.

12. PERSONNEL AND SERVICES

All services required herein will be performed by GGTPC under the supervision of its President and Chief Executive Officer and its Board of Directors.

13. INDEMNIFICATION

As respects acts, errors or omissions in the performance of professional services, GGTPC agrees to indemnify and hold harmless CITY, AGENCY and their respective 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 the

negligent acts, errors or omissions of GGTPC or its directors, officers, employees, volunteers, agents, contractors or subcontractors 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 commercial general and automobile liability insurance, GGTPC agrees to indemnify, defend (at CITY's option), and hold harmless CITY, AGENCY and their respective 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 the acts or omissions of GGTPC, or its directors, officers, employees, volunteers, agents, contractors or subcontractors in the performance of this Agreement, including, but not limited to, any expenditure of funds by GGTPC for purposes not authorized by this Agreement; excepting those which arise out of the sole negligence of CITY.

At all times during the term of this Agreement, GGTPC shall procure and maintain, or shall require its contractors and/or subcontractors to procure and maintain, insurance acceptable to CITY adequate to cover and fund the indemnification obligations set forth in this Section 13.

14. 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.

15. INSURANCE

Without limiting CITY's right to indemnification, GGTPC 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, if and 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 GGTPC's betterments and improvements, if any, which are owned by GGTPC.

Any and all other insurance necessary to adequately cover and fund GGTPC's indemnification obligations pursuant to Section 13, above.

Each insurance policy required by this Agreement, or an endorsement to the policy, 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 the City of Garden Grove 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 of Garden Grove or the Garden Grove Agency for Community Development 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, the Garden Grove Agency for Community Development, and their respective 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 GGTPC fails to require, 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 GGTPC 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 GGTPC to stop work under this Agreement and/or withhold any payment(s) which become due to GGTPC hereunder until GGTPC 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 GGTPC's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which GGTPC may be held responsible for payments of damages to persons or property resulting from GGTPC's or its contractors' or 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 GGTPC under this Agreement. GGTPC shall obtain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

The 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 GGTPC 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, GGTPC 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 GGTPC'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 from GGTPC within a reasonable time period, copies of any insurance policies, certificates, and/or endorsements required under this Agreement.

16. 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 GGTPC:

Garden Grove Tourism Promotion Corporation
11999 Harbor Boulevard
Garden Grove, CA 92840
Attn: General Manager/President

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.

17. 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 of receipt of written notice of such default, 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, 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 or to otherwise be construed to bind any future City Council to any particular action.

D. Within forty five (45) days of the effective date of any termination, CITY shall reimburse GGTPC for work which has been performed as of the termination date or which is in progress and cannot be prematurely terminated by virtue of contractual commitments. Unexpended and unencumbered funds provided to GGTPC by CITY pursuant to this Agreement and all tangible assets purchased wholly with such funds shall be immediately returned to CITY. It is the intent of GGTPC not to purchase assets using a combination of funds derived from GGTID assessment revenues and other resources available to GGTPC (a "Mixed Purchase"). In the event, however, that any Mixed Purchase shall be made, GGTPC shall provide CITY with prior notice of the Mixed Purchase, and CITY and GGTPC shall agree, prior to the Mixed Purchase, on how such asset shall be allocated in the event of termination of this Agreement.

18. INDEPENDENT CONTRACTOR

The performance of GGTPC'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 GGTPC by CITY, GGTPC 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 GGTPC 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.

19. COMPLIANCE WITH LAW

GGTPC shall keep itself informed of, and at all times observe and comply with, all applicable federal, state, and local laws and regulations, which in any manner or way affect those employed by it, the expenditure of the GGTID assessment revenues by GGTPC, and the performance of its obligations pursuant to this Agreement.

20. NO THIRD PARTY RIGHTS

Except as to those provisions expressly benefitting the AGENCY or 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

GGTPC 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. In CITY's sole discretion, CITY may withhold certain confidential information from GGTPC. To the extent CITY provides GGTPC with information in connection with this Agreement that CITY identifies as confidential, GGTPC 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 GGTPC in connection with this Agreement, including, but not limited to, all tax and business data, is for the sole use of GGTPC in connection with providing the services contemplated by this Agreement.

GGTPC 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; VENUE

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. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

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

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

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 Agreement on behalf of CITY and to bind CITY hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first set forth above.

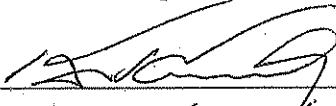
"CITY"

"GGTPC"

CITY OF GARDEN GROVE, a municipal corporation

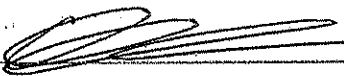
GARDEN GROVE TOURISM PROMOTION CORPORATION, a California nonprofit mutual benefit corporation

By _____
William Dalton, Mayor

By 
Printed Name Kevin Kennedy
Its: President

ATTEST:

Kathy Bailor, City Clerk

By 
Printed Name Obed Morales
Its: Secretary

APPROVED AS TO FORM:

Thomas F. Nixon, City Attorney

Date _____

EXHIBIT "A"

INSURANCE REQUIREMENTS FOR GGTPC CONTRACTORS

A. Types of Insurance. Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Garden Grove Tourism Promotion Corporation ("GGTPC"), the insurance described herein for the duration of the Contract, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the work under the Contract by Contractor, its agents, representatives, or employees. All required insurance shall be provided by a reputable insurance company admitted to issue insurance in the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

Except as otherwise authorized below for professional liability (errors and omissions) insurance, all insurance provided pursuant to the Contract shall be on an occurrence basis.

1. Errors and Omissions Insurance (for applicable professional services only). Standard industry form professional liability (errors and omissions) insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or occurrence, in accordance with the provisions of this Section.

If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the Contract, and for a period of three (3) years from the date of the completion of the services provided under the Contract. In the event of termination of the policy during this period, Contractor shall obtain continuing insurance coverage for the prior acts or omissions of Contractor during the course of performing services under the terms of the Contract. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements, providing for complete coverage.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of the Contract, or until completion of the services provided for in the Contract, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the services under the terms of the Contract.

2. Workers' Compensation Insurance. Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by State of California law.

3. Commercial General Liability Insurance. A policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least One Million Dollars (\$1,000,000.00) bodily injury and property damage including coverage for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

4. Business Automobile Insurance (if applicable). A policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of One Million Dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased and hired cars.

5. Employer Liability Insurance. A policy of employer liability insurance written on a per occurrence basis with a policy limit of at least One Million Dollars (\$1,000,000.00) for bodily injury or disease.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by GGTPC. Contractor guarantees payment of all deductibles and self-insured retentions.

C. Other Insurance Provisions. The following provisions shall apply to the insurance policies required of Contractor pursuant to the Contract:

1. The commercial general, business automobile and employer liability policies shall be endorsed to contain the following provision: "*Garden Grove Tourism Promotion Corporation, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective directors, officers, officials, employees, agents and volunteers are additional insureds with respect to: liability arising out of acts or omissions of or on behalf of Contractor; products and completed operations of Contractor; premises owned occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor.*" The coverage shall contain no special limitations on the scope of protection afforded to additional insureds. Additional insured endorsements are not required for the Professional Liability and Worker's Compensation policies.

2. For any claims related to the Contract, Contractor's coverage shall be primary insurance as respects GGTPC, the City of Garden Grove ("CITY"), the Garden Grove Agency for Community Development ("AGENCY"), and their officers, council members, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by GGTPC, CITY or AGENCY and their officers, council members, officials, employees, agents and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. Contractor's insurer shall waive all rights of subrogation and contribution it may have against GGTPC, CITY, AGENCY their directors, officers, officials, employees, agents and volunteers, and their respective insurers.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to GGTPC, CITY, AGENCY and their directors, officers, officials, employees, agents and volunteers.

4. Each required insurance policy shall be endorsed to state that coverage shall not be suspended, voided, cancelled or modified by either party, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U. S. Mail, postage prepaid, has been provided to GGTPC, CITY, AGENCY.

D. Verification of Coverage. Before commencing work under the Contract, Contractor shall furnish GGTPC certificates of insurance and original endorsements, including additional insured endorsements, in a form acceptable to GGTPC, effecting all of the required insurance coverages. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.