



AGENDA ITEM NO. 2:30pm

COUNCIL MEETING 8/26/08

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

[Handwritten signature]

August 26, 2008

FROM: ANDREW T. SOUZA, CITY MANAGER
Office of the City Manager

SUBJECT: CONTRACT WITH THE FRESNO CONVENTION AND VISITOR'S BUREAU (FCVB) TO PROMOTE CONVENTIONS AND TOURISM FOR THE CITY (CITY)

KEY RESULT AREA

Economic Development

RECOMMENDATIONS

Staff recommends approval for the contract with the Fresno Convention and Visitor's Bureau to promote conventions and tourism for the City of Fresno

EXECUTIVE SUMMARY

The City's contract with SMG for operations of the Fresno Convention and Entertainment Center (FCEC) calls for the Convention and Visitor's Bureau (CVB) to contract with SMG for the convention and tourism services they provide the City of Fresno. The City's funding of these services was passed-through SMG to the CVB. Based upon operational and fiscal changes that have occurred at the CVB since the time of the City's contract with SMG, City staff, SMG, and the CVB believe the City will be better served by contracting directly with the CVB.

BACKGROUND

SMG began operating the FCEC in January of 2004. Based upon the situation at that time, it was determined that the CVB would provide convention and tourism services through a subcontract agreement with SMG. Since that time the CVB has faced a significant number of changes and challenges, resulting in a significantly different organization today than what existed in January of 2004. As a result of these changes, staff from the City, SMG, and the CVB all agrees that the City will be better served by having the CVB contract directly with the City.

• SUBJECT TO MAYOR'S VETO

Presented to City Council

Date: 8/26/08

Disposition: Approved

The contract for services with the CVB, as proposed, will run for an initial three year period, and will be automatically renewed each of the following years, unless either party gives notice of a desire to modify or terminate the agreement six months prior to the end of the contract year. The contract calls for an annual fee to the CVB of \$1.2 million, which is included in the fiscal year, 2009-2009 budget. The contract also allows the CVB to earn a performance incentive of 6% of the increase in the amount of the total gross revenues received by hotels or other establishments which are subject to the City's Transient Occupancy Tax.

The CVB is required use its best efforts to meet or exceed an annual increase of 5% in the number of future room nights and conventions booked by the CVB. Bureau shall also use its best efforts to demonstrate annual improvement of two percent (2%) in Fresno County's market share of California tourism using the annual State Department of Commerce, Division of Tourism, Dean Runyon Report. Report dated 2006 demonstrate Fresno County at 1.2% of California market share.

The CVB will provide the City with quarterly reports of their activities, and to provide a marketing/business plan by September 1 of each contract year. The City may also require an independent audit of the CVB operations at any time throughout the life of the contract.

FISCAL IMPACT

The funding for the \$1.2 million base contract is included in the fiscal year 2008-2009 budget.

Attachment
Contract with FCVB

2:30 pm
8/26/08

AGREEMENT

City of Fresno & Fresno Convention and Visitors Bureau

THIS AGREEMENT is made and entered into as of the day of August 24, 2008 (the "Effective Date"), by and between the City of Fresno, a municipal corporation (hereinafter referred to as "City"), and FRESNO CITY and COUNTY CONVENTION AND VISITORS BUREAU, a California non-profit corporation (hereinafter referred to as "Bureau").

RECITALS

WHEREAS, on the 1st day of January, 2004, the City entered into a management agreement (herein referred to as the "Management Agreement") with SMG, a Pennsylvania general Partnership (herein referred to as "SMG"), obligating SMG to conduct and perform sales and marketing services on behalf of the Fresno Convention Center consisting of the Saroyan Theatre, Selland Arena, the Robert A. Schoettler Convention Center, Exhibit Hall and the Ernest E. Valdez Exhibit Hall (formerly known as Exhibit Hall South) located downtown in the City of Fresno; and

WHEREAS, Bureau is a 501(c) (6) California non-profit corporation, with an independent Board of Directors ("Board") and staff; whose mission is to promote, solicit, advertise, and stage conventions, amateur athletic events, special events, and other gatherings in the Fresno area, and to facilitate the cooperation of various commercial entities, business interests, and other community organizations in order to promote City and County of Fresno as a location for visitors and tourism; and

WHEREAS, on February 15, 2004, with the consent and approval of the City and as contemplated in the Management Agreement, SMG entered into a subcontract with the Bureau obligating the Bureau to perform many of the duties imposed on SMG in the Management Agreement; and

WHEREAS, the City now agrees to amend the Management Agreement with SMG, to relieve SMG of any responsibility for subcontracting or supervising the Bureau with respect to the provision of promotional services related to the Fresno Convention and Entertainment Center, to enter into a new contract directly between the City and the Bureau requiring that the Bureau promote, solicit, and advertise and stage conventions athletic events, special events and other gatherings within the City and County of Fresno and generally promote the City and County as a location for visitors and tourism, and providing that the City will compensate the Bureau for those services.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, City and Bureau agree as follows:

ARTICLE I SERVICES AND OBLIGATIONS

1.1. Scope of Bureau Services. Bureau shall:

- a. Market, promote, and book the entire Fresno Convention Center complex with conventions and other events that generate revenue for City as Bureau's primary and overriding mission, as stated in the foregoing recitals;
- b. Recruit, create, market, host, promote and coordinate conventions, small meetings and tourism packages, events and other activities that will generate a positive economic impact upon the City;
- c. Provide opportunities for local businesses to be associated with conventions and other activities and to enjoy the recognition and value that accompanies such events;
- d. Service conventions and special events in City by supplying badges, printed materials, banners, posters, pamphlets and periodicals;
- e. Work cooperatively with City by providing monthly briefings as well as written quarterly reports regarding all Bureau activities and the economic impact of these activities and attractions;
- f. Develop and maintain working relationships with City to maximize revenue for City by booking conventions and other events at the Fresno Convention Center;
- g. Encourage private investment in Fresno, including, without limitation, the building of a new hotel in downtown Fresno, and the upgrading of local hospitality, tourism and convention facilities;
- h. Strategically position Fresno as a premier destination and a preferred site for hosting conventions and other events through advertising, direct mail and the attendance at trade shows; and
- i. Otherwise, perform in accordance with those Performance Standards set forth in Article II below.

j. Enhance the image of Fresno City and County while selling conventions, meetings, and the Fresno City and County area as a tourist destination.

k. Make its best efforts to display Fresno and County with a positive image in order to attract visitors for events, shopping, attractions, recreation and cultural events.

l. Apportion its time and effort equally between convention sales and the promotion of tourism.

1.2. City Responsibilities. City shall:

a. Work cooperatively with Bureau in marketing, promoting, and booking the Fresno Convention Center;

b. Provide in a timely fashion to Bureau all funds appropriated to Bureau by City; and

c. Provide a timely response to all Bureau briefings and reports.

1.3. Prohibited Activities. Bureau shall not:

a. Provide gifts or rewards to any salaried, wage or contract employee of City, in accordance with City of Fresno Administrative Order No. 6-7;

b. Acquire any assets for use by or contribution to City, except as prescribed in Chapter 3, Article 1 of the Fresno Municipal Code.

1.4. Term: The term of this Agreement shall be from the Effective Date retroactive to July 1, 2008 through June 30, 2011. It is agreed that the Agreement will automatically be renewed for consecutive one-year terms thereafter, provided that in the event either party gives notice to the other party six months or more prior to the end of any term of that party's desire to modify or terminate any portion of this Agreement, the Agreement shall automatically terminate at the end of the current term when notice is given unless the parties agree on the terms of a revised agreement prior to that date.

1.5. Contract Price. Throughout the term of this Agreement, as consideration for the performance of its duties as prescribed herein, the City shall pay to Bureau the sum of \$1.2 million per fiscal year, said sum to be paid in quarterly installments commencing during the first quarter of the Effective Date. In addition to the above, the City shall pay to the Bureau an amount equal to six

percent (6%) of the increase in the amount of total gross revenues received by hotels, motels, or other establishments subject to the City's Transient Occupancy Tax, beginning with the year 2008-2009, over the amount of the gross sale revenues collected by hotels, motels and other establishments subject to the City's Transient Occupancy Tax during the 2007-2008 fiscal year (the "Base Year"). Said incentive fee based upon the above percentage of gross revenues collected by hotels, motels and other establishments subject to the City's Transient Occupancy Tax shall be payable in quarterly installments thirty (30) days following the last day of each March, June, September and December following the Effective Date based on the amount collected during the corresponding quarter of the Base Year; provided that in the event the aggregate amount of gross revenues collected by the above defined entities at the end of any fiscal year during the Term of this Agreement fail to exceed the gross revenues collected or received during the Base Year, then the prior incentive fees advanced during that Fiscal Year shall be offset against the next quarterly incentive fees owed by the City to Bureau until the total amount of any overage paid has been fully recovered by the City.

1.6. Appointment to Board of Directors. During the term of this Agreement, Bureau agrees that the Fresno City Manager or his/her designee shall serve as a member of Board of Directors of the Bureau. Bureau also agrees that City Manager or his/her designee shall serve on the Executive Committee and Budget Committee of the Bureau.

1.7. Contract Administrator. This Agreement shall be administered on behalf of City by the City Manager or his/her designee.

ARTICLE II BUREAU PERFORMANCE STANDARDS

2.1. Standard Required. For each fiscal year of this Agreement, Bureau shall use its best efforts to meet or exceed the number of future room nights and the number of conventions booked by Bureau over the amount booked by the Bureau during the immediately preceding 12-month period by 5% or more. For purposes of this Section 2.1, the term "convention" shall be defined to include meetings, events, and special packages. Bureau shall also use its best efforts to reach two percent (2%) within three years in Fresno County's market share of California tourism using the annual State Department of Commerce, Division of Tourism, Dean Runyon Report. Report dated 2006 demonstrate Fresno County at 1.2% of California market share.

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ARTICLE III
REPORTING, DOCUMENTATION & INSPECTION

3.1. Generally. Bureau shall file the requested reports and establish and maintain records in accordance with those requirements prescribed by City with respect to all matters covered by this Agreement. Failure by Bureau to provide the required information thirty days following the delivery by the City of a written demand therefore shall be grounds for delay or denial of any further payments hereunder by City until said delinquency is cured.

3.2. Monthly Updates. On or before the 5th day of each month during the Term of this Agreement, Bureau shall brief the City Manager or his/her designee on all activities of Bureau, including the scheduling of events, room night bookings, and the economic impact the City has or will receive from Fresno Convention Center bookings and events during the previous month. City may elect to receive such updates either in person or in writing or both.

3.3. Quarterly Reports. Bureau shall submit to the City Manager or his/her designee a quarterly written report identifying the nature and scope of Bureau's activities performed relative to this Agreement, including the scheduling of events and room night bookings, and the economic impact realized by the City from activities at the Fresno Convention Center during the previous calendar" quarter and current year-to-date. Such reports shall submitted to the City Manager or his/her designee not later than October 15, January 15, April 15 and July 15 of each year. Each report shall also specify:

- (a) Convention dates;
- (b) Facilities used by each convention;
- (c) The number of actual room nights utilized by conventions held at the Center;
- (d) Sponsoring organization;
- (e) The number of persons who attended each convention;
- (f) The number of convention leads produced;
- (g) Conventions booked with corresponding projected delegate count;
- (h) Projected economic impact; and
- (i) Hotel room nights generated for the previous three (3) months.

3.4. Annual Marketing & Business Plan. On or before September 1 of each year during the term hereof, Bureau shall submit to the City Manager or his/her designee a marketing/business plan for the next calendar year. The marketing plan shall include (1) specific convention marketing goals, (2) the number of convention leads generated and (3) the number of conventions booked during the previous fiscal year including estimated room nights,

estimated attendance, and estimated revenue potential. In addition, the marketing plan shall include information on Bureau's best efforts to achieve tourism marketing goals and programs during the previous fiscal year. This marketing/business plan shall specify marketing goals in the following categories: conventions, events, and special events, specifically those held in Fresno Convention Center facilities. The marketing/business plan shall also include a report indicating the number of visitor inquiries received during the previous fiscal year. Bureau shall also include the number of visitors to the Fresno area and their estimated economic impact to City and County of Fresno.

3.5. Records & Inspection. At any time for a period of three (3) years after final payment and for the period of time required by law, Bureau shall (i) make available to City for examination all of Bureau's records and data with respect to the matters covered by this Agreement or other relevant aspects of its business activities and (ii) Bureau shall permit City to audit, examine, and make excerpts or transcripts from these records and data necessary to ensure Bureau's compliance with the terms of this Agreement.

3.6. Annual Financial Report. Within ninety (90) days after the end of each of Bureau's fiscal years during the term hereof, Bureau shall submit to the City Manager or his/her designee annual audited financial statements in a form mutually agreeable to both parties. Said financial statements must be accompanied by an unqualified "clean" opinion provided by an independent certified public accountant approved by City and shall include, at a minimum, the presentation of comparative financial statements, which include a balance sheet, statement of revenues and expenses, statement of changes in equity, and statement of changes in cash position.

3.7. Accounting Practices. Bureau shall keep financial records consistent with Generally Accepted Accounting Principles. Said records shall include but not be limited to a statement/compilation of:

(a) all income including City contributions, membership dues, and miscellaneous revenue; and

(b) the following expense categories:

- (1) Employee services,
- (2) General fixed operating expenses,
- (3) Membership promotion expenses,
- (4) Convention solicitation,
- (5) Convention services,

- (6) Special event promotion, and
- (7) Visitor marketing.

3.8 Operations Audit. City may require an independent audit of Bureau operations by an auditor selected by City at the commencement of this Agreement and any time thereafter as requested by. City shall provide reasonable notice of an operations audit to Bureau.

ARTICLE IV. SUBCONTRACTS, USE LICENSE AGREEMENTS

4.1. Subcontracts. Bureau may enter into contracts with one or more third parties to carry out a portion of those services to be performed by Bureau hereunder; provided, however, that all Bureau shall be and remain responsible to City for the proper performance of any subcontract on the same terms and conditions applicable to Bureau under this Agreement.

4.2. Use License Agreements. Both parties agree that it shall be the sole responsibility of City to negotiate and execute use license agreements for the Fresno Convention Center.

ARTICLE V. CONFLICTS OF INTEREST, PROHIBITION POLITICAL ACTIVITY & LOBBYING

5.1. Conflicts of Interest. Bureau and its officers, directors of the Bureau ("Directors"), employees, agents, and subcontractors shall comply with all federal, state, and local conflict of interest laws, statutes, and regulations. In any event, Bureau and its officers, Directors, members, employees, agents, and subcontractors shall not enter into any proposed material transaction or series of transactions, if any person who is then one of its Directors, employees, or officers would, directly or indirectly, receive any income as the result of such a proposed transaction or series of transactions. However, to the extent consistent with Federal, State and Local laws, Board may approve a proposed transaction involving Bureau and its officers, Directors, members, employees, agents, and subcontractors if after conducting a reasonable investigation and prior to consummating the transaction (i) Board approves the proposed transaction or series of transactions or any part thereof, with knowledge of the material facts concerning the transaction or series of transactions; and (ii) Board determines in good faith by a vote of a majority of Directors then in office without counting the

vote of the interested Director or Directors, that: (1) The proposed transaction or series of transactions is for the Bureau's benefit; (2) the proposed transaction is fair and reasonable as to Bureau; and (3) the Bureau cannot obtain a more advantageous arrangement with reasonable efforts under the circumstances. For the purposes of this section, the term material shall be defined as any transaction or series of transactions greater than \$2,000.00.

5.2. Political Activity Prohibited. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used by Bureau for any political activity, or to further the election or defeat of any ballot measure or candidate for public office.

5.3. Lobbying Prohibited. None of the funds provided under this Agreement shall be used by Bureau for publicity, lobbying or propaganda purposes designed to support or defeat legislation pending before any legislative body.

ARTICLE VI. INSURANCE, INDEMNIFICATION

6.1. Indemnification. To the furthest extent allowed by law, Bureau shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Bureau, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If Bureau should subcontract all or any portion of the services to be performed under this Agreement, Bureau shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

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6.2. Insurance.

(a) Throughout the life of this Agreement, Bureau shall pay for and maintain in full force and effect all insurance as required in Exhibit A or as may be authorized, and any additional insurance as may be required, in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, Bureau or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Bureau shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Bureau of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Bureau shall not be deemed to release or diminish the liability of Bureau, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Bureau. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Bureau, its principals, officers, agents, employees, persons under the supervision of Bureau, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, Bureau shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If Bureau should subcontract all or any portion of the services to be performed under this Agreement, Bureau shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Bureau and City prior to the commencement of any services by the subcontractor.

ARTICLE VII
DATA, COPYRIGHT, USE OF NAME AND PROPRIETARY INFORMATION

7.1. Property of Bureau. All data and other materials that Bureau prepares in performing services under the terms of this Agreement shall be the exclusive property of Bureau, and Bureau shall own all copyrights for such data or other material and have unlimited right to use, produce, disclose and publish any such data in any manner whatsoever.

7.2. Proprietary Information and Trade Secrets. Bureau agrees that it shall not in any way or by any means, use or duplicate any proprietary information, including trade secrets, belonging to City, so long as City designates to Bureau that any such information is proprietary and constitutes trade secrets.

ARTICLE VIII
TERMINATION

8.1. Termination. City may terminate this Agreement if Bureau fails to meet the performance standards specified in Article II or comply with any other provision in this agreement. City shall first give Bureau written notice of City's belief that it has reason(s) to terminate this agreement. Bureau shall then have thirty (30) days from the date of such notice to correct all concerns identified in the notice. In the event the Bureau fails to address those concerns in a manner acceptable to the City within said thirty (30) day period, City may terminate this agreement by written notice to Bureau. In that event all finished or unfinished work prepared by Bureau shall become property of City, and Bureau shall be entitled to all unpaid compensation for work performed until such termination. All unpaid funds appropriated for Bureau shall be forwarded to Bureau by City within thirty (30) days of termination of the Management Agreement. The parties can terminate this Agreement without cause in accordance with the noticing provision 1.4.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1. Independent Contractor. While furnishing the services provided for herein, Bureau shall be acting as an independent contractor. Neither Bureau, nor any of its officers, associates, agents or employees shall be deemed an employee of City for any purpose. City expressly disclaims any responsibility for or obligations pertaining to Bureau's employees; e.g., hiring, termination, benefits, workers compensation, and/or taxes or any obligations arising from this Agreement.

9.2. Assignment. Bureau shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of City.

9.3. Amendments. This Agreement may be modified only by a written amendment approved and executed by both parties.

9.4. Severability. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provisions of this Agreement does not affect the rights of the parties to enforce any other provision of this Agreement at any time.

9.5. Notices. Except as otherwise expressly provided in this Agreement, all notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of receipt, if sent by facsimile to the person to whom notice is to be given at the facsimile number set forth below, or on the next business day if received after 5:00 P.M., or (iii) on the forth day after mailing, if mailed to the person to whom notice is to be given, by first class mail, postage prepaid, and properly addressed as follows:

City of Fresno

City Manager
City of Fresno
2600 Fresno Street
Room 2064
Fresno, CA 93721
Tel: (559) 621-7770
Fax: (559) 621-7776

Fresno Convention and Visitors Bureau

President and CEO
Fresno Convention & Visitors
Bureau
848 "M" Street
Fresno, CA 93721
(559) 233--0836

9.6. Binding. Once this Agreement is signed by all parties, it shall be binding upon and shall inure to the benefit of all parties and each parties

respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

9.7. Compliance With Law. In providing the services required under this Agreement, Bureau shall at all times comply with all applicable laws, statutes and ordinances of the United States, the State of California and City of Fresno, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

9.8. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

9.9. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

9.10. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

9.11. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

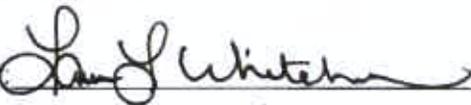
9.12. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, each party shall be responsible for their own attorney's fees and legal expenses.

9.13. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto that purport to modify the allocation of risk between the parties, provided for within the body of the Agreement, shall be null and void.

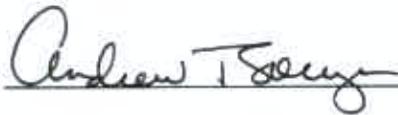
9.14. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

FRESNO CONVENTION AND
VISITORS BUREAU

By: 
Title: President/CEO

CITY OF FRESNO

By: 
Title: CITY MANAGER

ATTEST:
CITY CLERK

By: 
10-23-08

APPROVED AS TO FORM
JAMES C. SANCHEZ
CITY ATTORNEY

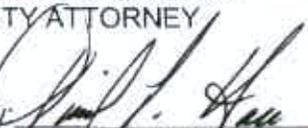
By: 
David P. Hale
Chief Assistant City Attorney

Exhibit A

INSURANCE REQUIREMENTS
Agreement between City of Fresno
and Fresno City and County Convention and Visitors Bureau
Sales & Marketing Services
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to Bureau's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

Bureau shall maintain limits of liability of not less than:

1. General Liability:
\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
\$1,000,000 each accident for bodily injury
\$1,000,000 disease each employee
\$1,000,000 disease policy limit

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4. Professional Liability (Errors and Omissions)

\$1,000,000 per claim/occurrence
\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event Bureau purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

Bureau shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Bureau shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Bureau shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
3. Bureau's insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Bureau and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Bureau.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the

alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Bureau must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Bureau shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Bureau shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Other Requirements

Bureau's owned or leased property or property in its care, custody and control, will be at the risk of the Bureau only and the City will not be liable for any damage thereto or theft thereof. Further, Bureau waives its right of recovery, and its insurers also waive their right of recovery, against City for loss of its owned or leased property or property in its care, custody and control. The phrase "owned or leased property or property in its care, custody and control" shall include, without limitation, tools, equipment, fixtures, materials and parts.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by City's Risk Manager.

Verification of Coverage

Bureau shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences. The words "endeavor to" and "but the failure to do so shall impose no obligation upon the insurer, it's agents or representatives" shall be deleted or eliminated from the Cancellation wording in the lower right hand corner of the certificate.