

**AGREEMENT BETWEEN THE CITY OF STOCKTON
AND THE STOCKTON CONVENTION AND VISITORS BUREAU, INC.
REGARDING THE STOCKTON TOURISM IMPROVEMENT
DISTRICT (2016-2025)**

This Agreement is entered into on November 12, 2014, by and between the **CITY OF STOCKTON**, a municipal corporation (herein "CITY"), and **THE STOCKTON CONVENTION AND VISITORS BUREAU, INC.**, a California non-profit corporation (herein "SCVB").

RECITALS

The California State Legislation has enacted the Property and Business Improvement District Law, Streets and Highways Code Sections 36600, et seq., effective January 1, 1995 (herein the "1994 Act").

On August 11, 2014, the SCVB's consultant, Civitas, prepared and released the Stockton Tourism Business Improvement District Management District Plan, which proposed the renewal of the Stockton Tourism Business Improvement District ("herein the "District") assessment under the 1994 Act.

On September 3, 2014, the lodging business owners submitted a petition to the CITY signed by property owners who would pay more than fifty percent (50%) of the proposed assessments and requested that the CITY initiate proceedings to renew the District.

On September 9, 2014, the City Council adopted a Resolution of Intention to renew the District and set a public meeting for September 23, 2014 to hear testimony for and against establishing the STBID and levying assessments.

On September 23, 2014, the City Council held a Public Meeting to hear testimony for and against establishing the STBID and levying assessments. There was no testimony given against.

On November 4, 2014, the City Council held a public hearing and voted to renew the District. A map of the District is attached hereto as **Exhibit A** and incorporated by this reference.

The SCVB, a non-profit 501(c)(6) corporation, was established to provide services to the District, including but not limited to promoting Stockton as a business, conference, sports and visitor destination.

CITY and SCVB desire to enter into this Agreement to set forth the roles and responsibilities of each party with respect to providing services to the District and administering the District.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS.** Certain terms are defined in the heading and recitals to this Agreement. In addition to those definitions, as used in this Agreement, the following definitions shall apply:
 - A. **District Plan.** The document entitled "Stockton Tourism District Management Plan" dated August 1, 2014, which was adopted by City Council on November 4, 2014

2014-11-04-1601-01 MP

(Resolution No. 2014-11-04-1601-01) is hereby incorporated into this Agreement by reference.

- B. District improvements. The improvements (or services) to be provided by the District include sidewalk and alley cleaning, graffiti and litter removal, uniformed guide patrols and revitalization, including marketing and District administration as more particularly described in the District Plan.

2. **SCVB OBLIGATIONS.** SCVB's obligations under this Agreement shall be as follows:

- A. Provide District Services. SCVB shall provide services, manage, and administer the District according to the Management District Plan during the following time periods:

Year 1 – January 1, 2016 through December 31, 2016
 Year 2 – January 1, 2017 through December 31, 2017
 Year 3 – January 1, 2018 through December 31, 2018
 Year 4 – January 1, 2019 through December 31, 2019
 Year 5 – January 1, 2020 through December 31, 2020
 Year 6 – January 1, 2021 through December 31, 2021
 Year 7 – January 1, 2022 through December 31, 2022
 Year 8 – January 1, 2023 through December 31, 2023
 Year 9 – January 1, 2024 through December 31, 2024
 Year 10–January 1, 2025 through December 31, 2025

- B. Annual Reports. SCVB shall submit to the CITY, for review, comment, and approval by the City Council, a report describing the District services, activities, revenues, and expenditures for each year of operation. Said report shall be submitted on or before February 1, 2016 for Year 1 and February 1 for each year thereafter. The Reports shall contain all the information required by Streets and Highways Code Section 36650, as well as an evaluation of all events, conferences, activities, and services performance during the previous year and goals for upcoming year. Each event shall have specific performance measures and outcomes detailed.
- C. Annual Service Plan Budget. SCVB shall submit to the CITY, for review, comment, and approval by the City Council, an annual service plan budget for each year of operation. Said plan shall be submitted on or before February 1, 2016 for Year 1, and February 1 for each year thereafter. The Plan will include any anticipated budget surplus from the prior year, planned revenue and expenditures, and proposed goals and expected outcomes for the coming year.
- D. Subcontracts. SCVB shall let and administer all subcontracts necessary for providing the District services. In all subcontracting, SCVB shall, to the extent feasible, use competitive bidding procedures unless SCVB has documented that it is necessary or desirable to award a subcontract on a negotiated basis, in order to assure the provisions of adequate improvements at the most advantageous cost.
- E. Events in Public Right-of-Way. SCVB shall comply with all federal state, and local laws and shall secure all necessary permits and authorizations pertaining to work within public right-of-ways including but not limited to sidewalks, alleys, streets, public easements, public buildings and public parking areas.

- F. Indemnify and Hold Harmless. SCVB shall defend, indemnify, and hold harmless CITY, its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of SCVB, any sub-contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.
- G. Insurance Requirements. During the term of this Agreement, SCVB shall maintain in full force and effect, insurance coverage in accordance with **Exhibit B** to this agreement.
3. **CITY OBLIGATIONS**. The CITY's obligations under this Agreement shall be as follows:
- A. District Administration. The CITY shall provide administrative support for the annual reports and plans, including preparation of the annual City Council staff reports, noticing to property owners, and any changes to the District organization.
- B. Collecting Assessments. The CITY will coordinate the annual levy and collection of all assessments for the District with the lodging businesses located within the City limits.
- C. Payments to SCVB. District assessments will be collected by the CITY and all assessments collected for the District will be paid directly to the SCVB, on a quarterly basis, no later than 45 days after the last day of the quarter, less a 3% administrative cost recovery which will be subject to review and adjusted annually. The CITY will also collect any penalties and interest due as a result of delinquent assessment payments by lodging businesses in accordance with the District Plan. All penalties and interest collected for the District will be paid directly to the SCVB, on a quarterly basis, no later than 45 days after the last day of the quarter, less a 30% administrative cost recovery.
- D. Council Appointee. The City Council shall appoint one non-voting ex officio member to the SCVB Board of Directors.

4. GENERAL PROVISIONS

- A. Notices. Any notice, tender, delivery, or other communications pursuant to the Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

City of Stockton
 Attn: Economic Development Director
 425 N. El Dorado Street, 3rd Floor
 Stockton, CA 95202

Stockton Convention and Visitors Bureau
 Attn: Executive Director
 P.O. Box 2336
 Stockton, CA 95201

Any party may change that party's address for these purposes by giving written notice of the change to the other parties in the manner provided in this section. If sent by mail,

any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, with postage prepaid, and addressed as set forth above.

- B. Term and Termination. The term of this Agreement shall be from January 1, 2016, through December 31, 2025. SCVB may recommend to the City Council an extension of the termination date in order to allow SCVB to expend remaining District funds for District services in the event all District funds are not received and spent by December 31, 2025. Said extension if any, shall be at the sole discretion of the City Council.

Either party shall have the right to terminate this Agreement at any time upon giving the other party written notice of its intention to terminate sixty (60) days prior to the effective date of said termination. Upon termination, SCVB shall turn over to CITY all funds, documents, records, and instruments of services produced by SCVB in connection with its performance of services pursuant to this Agreement, less any amounts reasonably necessary to dissolve the District and the SCVB.

Following termination, SCVB as expeditiously as is reasonably possible shall terminate all activities of the District, pay all obligations and costs of administration incurred on behalf of the District, and return all remaining District funds to the CITY. Thereafter, the CITY shall return all remaining District funds to the owners of assessed properties in amounts proportionate to the amount of assessments they paid to the District.

- C. Non-Discrimination. In performing services under this Agreement, SCVB shall not discriminate in the employment of its employees or in the engagement of any Subcontractors on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by state or federal law.
- D. Assignment. SCVB shall neither assign nor delegate its rights and/or duties under this Agreement without first obtaining CITY's written consent to the assignment and/or delegation. Any such assignment or delegation made by SCVB without prior written consent of CITY will render this Agreement voidable at the sole discretion of CITY.
- E. Audits. Each Party reserves the right to periodically audit all revenue and expenditures made by the other for services under the Agreement. Upon request, a Party agrees to furnish the other, or a designated representative, with necessary information and assistance.

Each Party agrees that the other, or its delegate, shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement, and agrees to provide the other, or its delegate, with any relevant information requested and shall permit the other, or its delegate, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Agreement. Each Party further agrees to maintain such records for a period of three (3) years after this Agreement is terminated.

- F. Attorneys Fees. If the services of any attorney are required by either party to secure the performance of this Agreement, or otherwise upon the breach or the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any

provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and other expenses, in addition to any other relief to which such party may be entitled.

- G. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
- H. Waiver. The waiver by any party to this agreement for breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- I. Entire Agreement. This document, including all Exhibits, contains the entire Agreement between the parties and supersedes any oral or written understandings they may have had prior to the execution of this Agreement.
- J. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be deemed invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on this date first set forth above.

ATTEST:

CITY OF STOCKTON, a municipal corporation



By: Bonnie Paige
for BONNIE PAIGE
City Clerk

By: Kurt Wilson
KURT WILSON
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

STOCKTON CONVENTION AND
VISITORS BUREAU, INC., a California
nonprofit corporation

By: John Luebberke
JOHN LUEBBERKE, City Attorney

By: George Kaplanis
GEORGE KAPLANIS
Board President

- Exhibit A: District Map
- Exhibit B: Insurance Requirements

EXHIBIT A

District Map

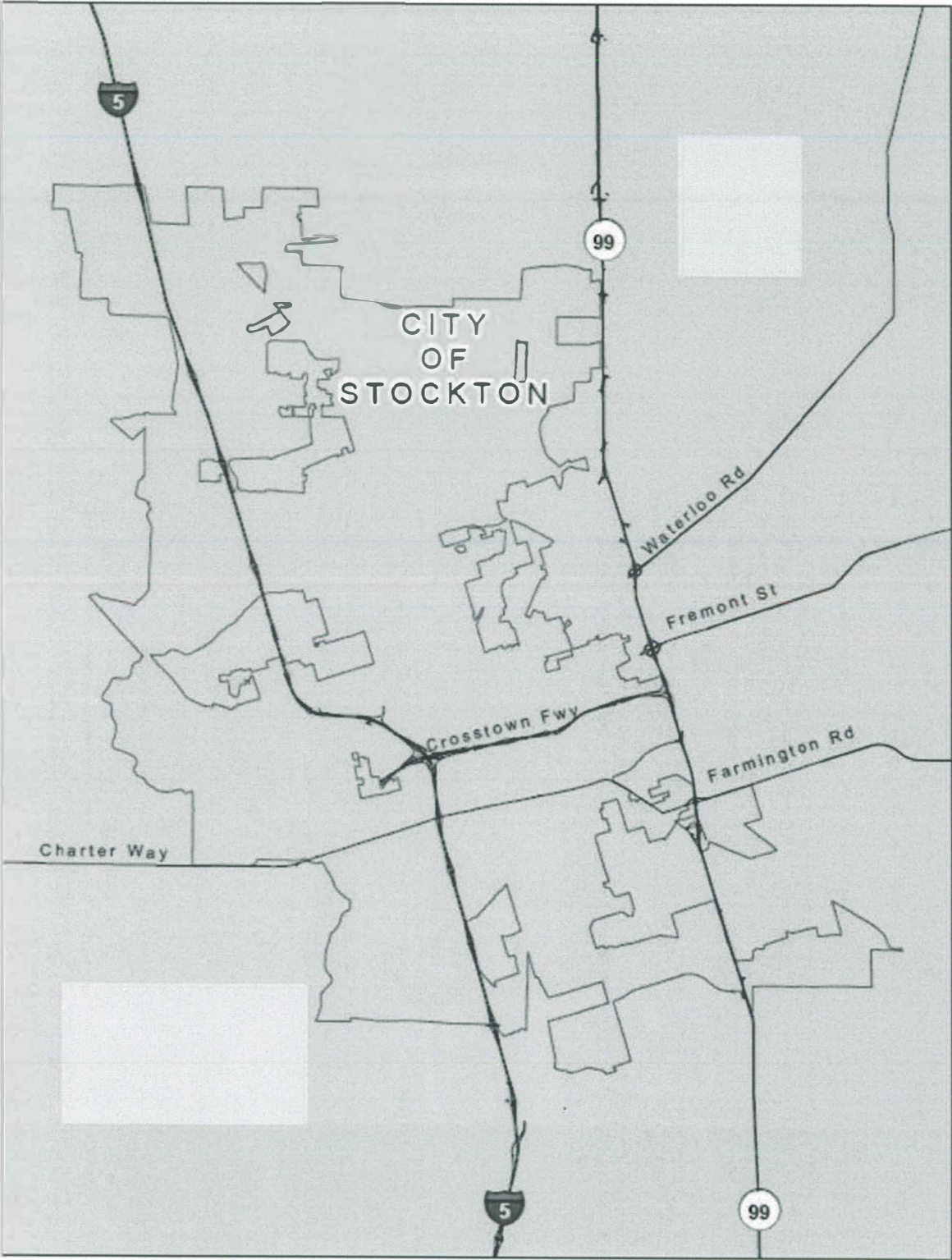


EXHIBIT B

INSURANCE REQUIREMENTS
STOCKTON CONVENTION AND VISITORS BUREAU (SCVB)

SCVB shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the SCVB, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the SCVB shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:
 - A. **AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with the following limits of liability: Bodily injury \$250,000 each person, and \$500,000 each occurrence. Property Damage \$100,000 each occurrence.
 - B. **WORKERS' COMPENSATION** insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.
 - C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR **ADDITIONAL** REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than \$1,000,000 per occurrence, and if written on an Aggregate basis, \$2,000,000 Aggregate limit.
- (ii) **A CRIME INSURANCE OR FIDELITY BOND** covering the dishonest acts of employees furnished by Contractor, including coverage for theft of property of the City by the Contractor, its employees or subcontractors. The limit shall not be less than \$250,000 each occurrence.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

- 1 The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.*
2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date SCVB completes its performance of services under this Agreement.
3. For any claims related to products provided under this contract, the SCVB's insurance coverage shall be primary insurance as respects the City of Stockton, its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the SCVB's insurance

and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
5. Regardless of these contract minimum insurance requirements, the SCVB and its insurer shall agree to commit the SCVB's full policy limits and these minimum requirements shall not restrict the SCVB's liability or coverage limit obligations.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
Stewart Eberhardt Building
22 E. Weber Avenue, Suite 150
Stockton, CA 95202
9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Vendor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8233. Our fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the SCVB fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the SCVB should subcontract all or any portion of the work to be performed in this contract, the SCVB shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.