

**MANAGEMENT AGREEMENT BETWEEN THE CITY OF
TEMECULA AND VISIT TEMECULA VALLEY FOR THE
OPERATION AND ADMINISTRATION OF VISIT TEMECULA
VALLEY TOURISM BUSINESS IMPROVEMENT DISTRICT**

THIS AGREEMENT is made and entered into as of January 1, 2025, by and between the CITY OF TEMECULA, a municipal corporation ("City") and Visit Temecula Valley, a California non-profit corporation (the "VTV").

RECITALS:

WHEREAS, on November 12, 2024, the City Council adopted Resolution No. 24-____ (the "Resolution") renewing the Visit Temecula Valley Tourism Business Improvement District (the "District") under the provisions of the Parking and Business Improvement District Law of 1994, Section 36600 et seq. of the California Streets and Highways Code (the "Act"); and

WHEREAS, pursuant to the Act and the Resolution, the City is authorized to levy and collect an annual assessment (the "Assessment") from lodging businesses in the District for the purpose of tourism promotions and marketing projects, programs and activities that benefit lodging businesses located and operating within the boundaries of the District; and

WHEREAS, the City Council approved a Management District Plan ("Plan"), containing all of the information required by Section 36622 of the Act and designating VTV to serve as the Owner's Association for the District. A copy of the Plan is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, VTV has available personnel, resources and expertise to implement projects, programs, and activities within the District which are permitted to be funded with proceeds of the Assessment and is willing to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the City and VTV hereby agree as follows:

1. PROJECT COORDINATION.

A. The City Manager of the City, or his or her designated representative (hereafter "City Manager"), shall be the project manager for the City and shall supervise and direct all actions to be performed by the City pursuant to this Agreement.

B. VTV designates its President & CEO to be the contact person with regard to all actions to be taken on behalf of VTV pursuant to this Agreement.

2. TERM.

A. Term. The term of the Agreement commences on January 1, 2025 and terminates on December 31, 2029.

B. Termination. The City may suspend or terminate this Agreement immediately upon each breach of Section 7 (Insurance Requirements) or Section 15 (Prohibited Interest). In addition, the City or VTV, upon at least thirty (30) days' prior written notice, may terminate this Agreement with or without cause.

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

3. SERVICES TO BE RENDERED; ANNUAL REPORT AND BUDGET.

A. VTV shall use the funds provided by this Agreement for marketing and promotions to increase tourism and market the Temecula Valley area as a tourist destination, for the specific and special benefit of the lodging businesses located and operating within the boundaries of the District, as more specifically provided in this Agreement. VTV may use the funds for administrative expenses and salaries incurred in furtherance of these purposes provided the funds used for such administrative expenses and salaries do not exceed 13% percent of the Assessment revenues in any fiscal year.

B. Except as provided in Section 3.C. below, on or before July 1 of each calendar year VTV shall submit to the City an annual report (the "Annual Report") for the previous calendar year pursuant to Section 36650 of the Act for each fiscal year (fiscal year aligns with calendar year) during the term of this Agreement setting forth: (1) any proposed changes in the boundaries of the District or in any benefit zones or classification of businesses within the District; (2) the projects, programs and activities to be provided for that fiscal year; (3) an estimate of the cost of providing the projects, programs and activities for that fiscal year; (4) the method and basis of levying the Assessment in sufficient detail to allow each lodging business owner to estimate the amount of the Assessment to be levied against his or her business for that fiscal year; (5) the estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year; and (6) the estimated amount of any contributions to be made from sources other than Assessments levied pursuant to the Act. Pursuant to the Act, the City Council may accept or modify the proposed Annual Report.

C. In any year when VTV proposes that the City Council increase the Assessment and/or expand the boundaries of the District and/or modify the projects, programs and activities for the ensuing fiscal year, the Annual Report shall be submitted to the City on or before June 1 of the calendar year preceding the start of such ensuing fiscal year.

4. COLLECTION OF ASSESSMENTS.

VTV 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 lodging businesses in the District. The City shall have no liability to VTV for its decision to not levy Assessments or in connection with the amounts of any Assessments levied.

5. DISBURSEMENT AND EXPENDITURE OF FUNDS; AUDIT REQUIREMENT.

A. So long as VTV is not in breach of this Agreement, the City shall disburse all collected Assessments to VTV for funding the projects, programs and activities pursuant to this Agreement; provided however that City may retain from the collected Assessments its costs of renewing the District and two percent (2%) of the collected Assessments each month for administration of the District. Disbursements shall be made in such manner as the parties' representatives shall mutually agree upon in writing.

B. VTV may expend any funds received pursuant to this Agreement only for the purposes authorized by the Resolution, and only in accordance with the Plan and the applicable Annual Report, as approved by the City Council. VTV agrees to carry out all projects, activities, and programs in accordance with all applicable laws.

C. VTV shall establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards as approved by the City's Director of Finance. The system shall detail all costs chargeable to the City under this Agreement and shall substantiate all such costs, meeting acceptable standards for major public entities in Southern California and complying with any applicable Federal standards. The system shall meet the minimum fiscal and internal control requirements as determined by the Director of Finance. Within one hundred twenty (120) days after the end of the District's fiscal year, VTV shall submit to the City an audit report, prepared by a person or company approved by the City of the District's expenditures and completed activities for the preceding fiscal year.

6. INDEMNIFICATION.

A. VTV agrees to defend, indemnify, protect and hold harmless the City and its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of and to the extent of VTV's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of and to the extent of the negligence of the City, or its officers, officials, employees and volunteers.

B. The City agrees to defend, indemnify, protect and hold harmless VTV and its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which VTV, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of and to the extent of City's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of and to the extent of the negligence of VTV and its officers, officials, employees and volunteers.

7. INSURANCE REQUIREMENTS.

VTV shall procure and maintain for the duration of the contract insurance against claims for injuries to persons and/or damages to property, which may arise from or in connection with the performance of the work hereunder and the results of work by VTV, its agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operation, property damage, bodily injury, and personal & advertising with limits no less than One Million (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if VTV has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limits no less than One Million (\$1,000,000) per accident for bodily injury, including death, of one or more persons, property damage and personal injury.

3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One million (\$1,000,000) per accident for bodily injury or disease. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to its employees. Pursuant to Labor Code Section 1861, VTV must submit to City the following certification before commencing the performance of the work of this agreement:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

By executing this Agreement, VTV is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the City's Risk Manager.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of VTV's completed operations of the VTV; premises owned, occupied or used by VTV. General liability coverage can be provided in the form of an endorsement to VTV Insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

2) For any claims related to this project, VTV insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of VTV's insurance and shall not contribute with it. This also applies to any Excess or Umbrella liability policies.

3) VTV may use Umbrella or Excess Policies to provide the limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability Insurance.

4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect the indemnification provided to the City of Temecula, the Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, or volunteers.

5) VTV's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) If VTV's maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Incubator Client.

7) If insurance coverage is canceled or, reduced in coverage or in limits VTV shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

8) Unless otherwise approved by City, if any part of the Services is subcontracted, the Minimum Insurance Requirements must be provided by, or on behalf of, all subcontractors even if city has approved lesser insurance requirements for VTV and all subcontractors must agree in writing to be bound by the provisions of this section.

D. Acceptability of Insurers. Insurance required above, except for workers' compensation insurance, must be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self-insurance shall not be considered to comply with these insurance requirements.

E. Verification of Coverage. VTV shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable policy language affecting coverage required by this clause. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive VTV's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

F. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. INDEPENDENT CONTRACTOR.

VTV is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of VTV shall at all times be under VTV's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of VTV or any of VTV's officers, employees, or agents except as set forth in this Agreement. VTV shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. VTV shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

9. LEGAL RESPONSIBILITIES.

A. VTV shall keep itself informed of all local, State and Federal laws, ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. VTV shall at all times observe and comply with all such laws, ordinances and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of VTV to comply with this section.

B. All meetings of the Board of Directors of VTV or any group of representatives of VTV that would constitute a "legislative body" as defined in California Government Code section 54952 (a "committee or subcommittee") where proposed or approved District activities and/or expenditures (collectively, "District Matters") will be discussed shall be open to the public, including without limitation meetings held at District businesses, as required by the Ralph M. Brown Act, Government Code section 54950, et seq. (the "Brown Act"). Prior notice of such meetings, including an agenda prepared and posted in accordance with the Brown Act, of the District Matters to be discussed and the time and location of the meeting, shall be given in accordance with the Brown Act. No District Matters shall be discussed at any meeting of the Board of Directors of VTV or a committee or subcommittee unless such public notice has been given.

C. Notwithstanding the foregoing, the Board of Directors of VTV shall be permitted to meet in sessions closed to the public, so long as any such closed session conforms to the requirements of the Brown Act.

D. The City shall, at the request of VTV, post notices and agendas prepared and provided by VTV for VTV meetings on the City's website and other locations along with notices of other City meetings.

10. RELEASE OF INFORMATION.

A. Except for such documents as are public records exempt from disclosure under the California Public Records Act, all information gained by VTV in performance of this Agreement shall be considered confidential and shall not be released by VTV without City's prior written authorization. VTV, its officers, employees, agents or subcontractors, shall not without written authorization from the Assistant City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City unless such information is subject to disclosure under the California Public Records Act. Response to a subpoena or court order shall not be considered "voluntary" provided VTV gives City notice of such court order or subpoena.

B. VTV shall promptly notify City should VTV, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or activities. City retains the right, but has no obligation, to represent VTV and/or be present at any deposition, hearing or similar proceeding. VTV agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by VTV. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

11. NOTICES.

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, FedEx, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:	City of Temecula 41000 Main Street Temecula, California 92590 Attention: City Manager
With Copy to:	Peter M. Thorson, Esq. Richards, Watson & Gershon 355 South Grand Ave, 40th Floor Los Angeles, California 90071
To VTV:	Visit Temecula Valley (VTV) 28690 Mercedes Avenue, Suite A Temecula, California 92590

12. ASSIGNMENT.

VTV shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

13. LICENSES.

At all times during the term of this Agreement, VTV shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

14. GOVERNING LAW.

The City and VTV understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

15. PROHIBITED INTEREST.

No officer, or employee of the City of Temecula who has participated in the negotiation or development of this Agreement, or has or will participate in the administration of this Agreement, shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, VTV, or VTV's contractors for any work required by this Agreement, during his or her tenure with the City or for one year thereafter. VTV hereby warrants and represents to the City that no officer or employee of the City of Temecula has any such interest. VTV further agrees to notify the City in the event any such interest is discovered.

16. ENTIRE AGREEMENT.

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

17. AUTHORITY TO EXECUTE THIS AGREEMENT.

The person or persons executing this Agreement on behalf of VTV warrants and represents that he or she has the authority to execute this Agreement on behalf of VTV and has the authority to bind VTV to the performance of its obligations hereunder.

18. WAIVER.

The City and VTV agree that waiver by the City or VTV of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

19. TIME OF ESSENCE.

Time is of the essence of each and every provision of this Agreement.

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

CITY OF TEMECULA

James Stewart, Mayor

Attest:

Randi Johl, JD, MMC City Clerk

Approved As to Form:

Peter M. Thorson City Attorney

VISIT TEMECULA VALLEY ("VTV")

By: Michael Feeley
(signature)

Name: Michael Feeley
(print name)

Title: Chairman
(print title)

VISIT TEMECULA VALLEY ("VTV")

By: Samantha Doff
(signature)

Name: Samantha Doff
(print name)

Title: Secretary
(print title)

(Two Signatures of Corporate Officers Required for VTV)

Exhibit A
Management District Plan
(attached)