

LOMPOC TOURISM IMPROVEMENT DISTRICT
MANAGEMENT AGREEMENT 2019-2028

This Agreement is entered into by and between the CITY OF LOMPOC, a municipal corporation (City), and VISIT LOMPOC, INC., a California nonprofit corporation organized and existing under and pursuant to the laws of the State of California (VLI) with reference to the following facts:

RECITALS

- A. Following properly noticed and publicly held meetings and hearings, the City Council has renewed a tourism improvement district to be known as the Lompoc Tourism Improvement District (LTID), pursuant to Property and Business Improvement District Law of 1994 (Streets and Highways Code sections 36600 *et seq.*) (PBIDL), by and through the adoption of Resolution No. 6180(18) on May 15, 2018 (Resolution).
- B. The LTID was originally established by adoption of Resolution No. 5886(13) on December 3, 2013.
- C. Pursuant to the Resolution and enabling law, assessments will be levied upon the transient occupancy businesses located within the LTID.
- D. Such assessments levied and collected by City for the LTID shall be used only for the purposes set forth in the Resolution and Management District Plan for the LTID (the Plan).
- E. Since the Plan states an owner's association will provide the improvements and activities described in the Plan and designates VLI as that association, pursuant to Section 36651 of the PBIDL, City is authorized to enter into an agreement with VLI to provide the improvements and activities described in the Plan.
- F. The City Council of City has determined the public interest, convenience and necessity require the execution of this Agreement.

NOW, THEREFORE, City and VLI in consideration of the recitals, mutual promises, covenants, representations and agreements set forth below, hereby promise, covenant, agree and represent as follows:

Section 1. TERM OF AGREEMENT

- 1.1 This Agreement shall be effective from the date it is signed on behalf of City and VLI through December 31, 2028, unless terminated sooner pursuant to the terms hereof. For the first year of the LTID, obligations or expenditures for items not listed in the Plan shall not be paid through assessments collected for the LTID.

For each of the remaining years of the LTID, obligations or expenditures for items not listed in the Plan and the annual report required by PBIDL section 36650 shall not be paid through assessments collected for the LTID.

- 1.2 VLI may terminate this Agreement in advance of the expiration of the term for substantial cause, by giving 60-days' written notice to City. Such termination shall be effective on the 61st day after mailing of such notice, unless the cause has been cured.
- 1.3 City may terminate this Agreement in advance of the expiration of the term with or without cause, by giving 60-days' written notice to VLI. Such termination shall be effective on the 61st day after mailing of such notice, unless the termination is for cause and the cause has been cured.

Section 2. VLI RESPONSIBILITIES

- 2.1 VLI shall not be entitled to receive more than 10% of the revenue collected annually through the LTID for any and all administrative expenses, unless a greater amount is approved by the City Council upon submission of an annual report for the LTID as provided for in the Plan. Such amount shall only be used for administrative costs as provided in the Plan and the required annual report.
- 2.2 VLI shall render professional services and shall cooperate with City's Economic Development Director/Assistant City Manager, or his/her designee, to provide work program coordination consisting of project development and implementation, program administration, and plans and reports.
- 2.3 VLI shall administer the entire work program in a prudent manner within the budget attached hereto and made a part hereof as Exhibit A. VLI assumes responsibility for contracting for support services as required and paying for all such direct out-of-pocket expenses as may be necessary for the timely completion of work. Obligations or expenditures for items not meeting the requirements of the Plan, annual report, this Agreement and the PBIDL shall not be paid through assessments collected for the LTID.
- 2.4 In addition to the administrative fee described in Section 5.2, below, VLI shall pay City all standard City fees including, but not limited to, fees or service charges for photocopy and reproduction requests.
- 2.5 VLI shall maintain ongoing liaison with the community, which shall include holding an annual public meeting to be noticed in writing to all assessed business establishments in the LTID. The meeting will be conducted in order to allow the business establishments to familiarize themselves with VLI functions and to inform VLI of their concerns and desires. City's Economic Development Director/Assistant City Manager, or his/her designee, may attend as a member of the panel to provide information as required.

- 2.6 VLI shall provide sales and marketing services which provide a specific benefit to businesses in the LTID as described in the Plan.
- 2.7 City encourages VLI's Board of Directors to appoint one of its members to serve on City's Economic Development Committee.
- 2.8 VLI shall apply for and maintain tax-exempt status with the United States Internal Revenue Service (IRS) and the California State Franchise Tax Board (FTB) for the term of this Agreement. VLI shall provide documentation of applications for (and, when received, approvals of) such status to City's Management Services Director prior to the disbursement of any funds to VLI pursuant to this Agreement. If such status is not obtained, then City's obligations to disburse any funds to VLI shall cease. During the period funding is disbursed by City to VLI prior to VLI's receipt of such approvals, VLI shall ensure its activities meet the requirements of IRS and FTB applicable to the tax-exempt status to which the applications apply.
- 2.9 VLI, and subcontractors and consultants, if any, shall be required to obtain all necessary documentation including, but not limited to, any and all certificates, licenses and permits required to do business in City. A list of said subcontractors and consultants shall be submitted to City's Management Services Director on a quarterly basis, commencing April 1, 2019.
- 2.10 Commencing with March 31st, 2019, and within 60 days after the end of each calendar year this Agreement is in effect, VLI shall submit an annual report to City, as described in PBID section 36650. Each annual report will be provided so it can then be presented to the City Council by each second meeting of March during the term of this Agreement; provided, that the final annual report will be due to City no later than February 23, 2029, for the 2028 calendar year.
- 2.11 Pursuant to PBID 36614.5, (i) VLI shall comply with the Ralph M. Brown Act (Government Code sections 54950 *et seq.*) and the California Public Records Act (Government Code sections 6250 *et seq.*), each as amended, (ii) VLI shall not be considered a public entity for any purpose, and (iii) VLI's board members and staff shall not be considered public officials for any reason.

Section 3. CITY RESPONSIBILITIES

- 3.1 City shall be responsible for mailing monthly assessment notices and first delinquent notices, for receiving the assessments and for authorizing disbursements of collected funds to VLI, except and unless otherwise agreed upon by both parties. City may, but is not obligated by this Agreement, or any other policies, rules, regulations or laws, to perform any further collection efforts beyond the mailing of the annual assessment notices and first delinquent notices.

- 3.1.1 If any collection efforts beyond those provided for in Section 3.1 are requested by VLI, then City may authorize an agent to pursue additional collection efforts, as set forth in Section 4.
- 3.1.2 City shall not be required to collect assessments on stays of more than 30 consecutive days, nor for government employees on government business, upon proof, reasonably acceptable to City's Management Services Director.
- 3.2 VLI understands and agrees, if a business operator remitting payments pursuant to an assessment notice is in arrears on its assessment payments, including interest and penalties, then City shall apply any payment received from that operator in the following priority:
 - 3.2.2 First to LTID obligations based on completed LTID return (or form) filed with City for that operator;
 - 3.2.3 Second to LTID penalties and interest due on unpaid or late payments related to completed LTID return (or form) filed with City for that operator.
- 3.3 Certain types of information obtained and possessed by City including, but not limited to, certain tax data, have been determined to be confidential information by the City Attorney and will not be made available to VLI. Notwithstanding, City's Management Services Department shall inform VLI when a new transient occupancy business enters the LTID. That shall occur each quarter. The list shall include a method by which the VLI may contact that new business.

Section 4. ADDITIONAL COLLECTION EFFORTS

Regarding any collection efforts beyond those provided for in Section 3.1:

- 4.1 City and VLI shall agree upon and designate a third-party collections agent, to be retained by City, to perform any such additional collection efforts.
- 4.2 City or VLI may, at its discretion, refer any delinquent LTID assessments to the designated third-party collections agent for further collection efforts.
- 4.3 City shall be solely responsible for directing the designated third-party collections agent regarding all collection issues, other than those issues delegated to VLI in Section 3.1.1.

Section 5. DISBURSEMENTS

- 5.1 Subject to City's retention of any and all penalties and interest paid, and to Sections 3.2, above, and 5.2, 5.3, and 6.1, below, the total LTID assessments collected for each calendar year shall be disbursed to the VLI by City's Finance Division; provided, that if the assessments collected for one calendar year exceeds the total

budget approved by the City Council for that year, then that excess amount shall be spent by VLI in accordance with the proportional budget in the Plan and most recent annual report.

- 5.2 In order to cover City expenses related to the LTID program, prior to disbursement of any funds to the VLI, City shall retain for each calendar year an administrative fee in an amount equal to 1% of the total assessment, excluding penalties and interest, collected during that year; provided, that 1% retention may be taken from each periodic disbursement to VLI. Over the 10-year term, the City Administration fee will increase by 0.1% annually effective with the periodic disbursement for the January 2019 assessments and annually increasing in 0.1% increments to a maximum of 2%.
- 5.3 City's Management Services Director reserves the right to retain a sum equal to the amount of assessments known to be in dispute for a period of 45 calendar days after the close of each fiscal year, on the 31st day of December of each year, as a contingency fund for the processing of valid claims for refunds or adjustments submitted to City by business establishments within the LTID. City's standard policy for processing claims for refunds or adjustments shall apply.
- 5.4 Subject to Sections 3.2, 5.1 through 5.3, and 6.1, City's Management Services Director shall disburse funds on a monthly basis (or more often in the sole discretion of the Management Services Director, or his/her designee) when the LTID account balance exceeds \$100. City's standard policy for processing requests for disbursement shall apply.
- 5.5 If VLI dissolves itself prior to, or upon, the expiration of this Agreement, then any unexpended monies shall be returned to City. Any assessments collected by City on behalf of VLI prior to its dissolution and not yet disbursed to VLI shall be retained by City and used for any purpose permitted by the Plan and PBIDL.

Section 6. REIMBURSEMENT OF COLLECTION EXPENSES

- 6.1 In addition to the 1% administrative fee, which City will retain pursuant to Section 5.2, City shall use a portion of the assessments collected by a third party collections agent to pay the collection costs agreed to by City and that agent as full compensation for successful collection services rendered; provided, that City shall, (i) at the same time the agent remits successful collections to City, require the collections agent to submit a report describing the successful collections made and the amount retained by the agent, and (ii) provide a copy of that report to VLI.
- 6.2 VLI shall be solely responsible for reimbursing the collections agent for all authorized collection expenses exceeding the funds available for reimbursement pursuant to Section 6.1.

Section 7. NOTICES

7.1 Notices to the parties shall, unless otherwise requested in writing, be sent to:

City City of Lompoc
Attn: Econ Dev Dir /Asst City Manager
100 Civic Center Plaza
Lompoc, CA 93436

VLI: Visit Lompoc, Inc.
Attention: President
111 South I Street
Lompoc, CA 93436

Section 8. OWNERSHIP OF DOCUMENTS

The work product prepared or acquired by VLI pursuant to this Agreement including, but not limited to, any and all data, documents, memoranda, sketches, drawings, photographs, audio tapes, video tapes, computer disks, designs, plans, reports, investigations and materials (collectively and individually, the Work Product) shall be and shall remain property of City and the LTID for the exclusive use of the LTID. VLI shall have the right to retain copies of the Work Product. VLI acknowledges the Work Product shall be and shall remain confidential, to the extent permitted by law, and shall not be made available to any individual or organization without the prior written consent of City. The Work Product shall, upon demand of City, be delivered to City without additional cost or expense to City.

Section 9. CONFLICT OF INTEREST

For the duration of this Agreement, VLI or its employees will not act as consultant or perform services of any kind for any person or entity in regard to the LTID without the prior written consent of City. In addition, neither members of the Board of Directors of VLI nor paid staff, if any, may enter into any contract on behalf of VLI, nor vote on any LTID matters when such contract or matter would be of financial benefit to the member of the Board of Directors over and above the general financial benefit to all businesses in the LTID.

Section 10. COST RECORDS

10.1 In accordance with generally accepted accounting principles, VLI shall maintain full and complete records of services performed under this Agreement. Such records shall be open to the inspection of City and shall be kept for a five-year period in case of audit.

10.2 The records maintained by VLI shall include all receipts for expenditures incurred. City reserves the right for City's Economic Development Director/Assistant City

Administrator, or his/her designee, to perform a contract compliance audit at any time during the fiscal year. VLI agrees to keep all receipts and other supporting documents available for inspection during said audits.

Section 11. EQUAL OPPORTUNITY PROGRAM

VLI shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and City. In performing this Agreement, VLI shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical conditions.

Section 12. AMENDMENTS

- 12.1 The services to be provided hereunder shall be subject to any changes in the Plan. Such changes, which are mutually agreed upon by and between City and VLI, after a hearing process per the PBIDL, shall be incorporated in written amendments to this Agreement.
- 12.2 This Agreement may not be amended except in writing by mutual agreement of both parties. A failure to object to a breach of this Agreement shall not constitute an amendment thereof, nor shall it waive any future breach of this Agreement.

Section 13. INSURANCE

- 13.1 VLI shall submit a duly executed certificate of insurance, with declarations page and endorsement list, which shall be reviewed and approved by the City Attorney, for an occurrence based Comprehensive General Liability (CGL) policy, at least as broad as ISO Form CG 0001, in the minimum amount of \$1,000,000 each occurrence, with not less than \$2,000,000 in annual aggregate coverage.
 - 13.1.1 The CGL policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy, for any claims that relate in any way to this Agreement.
 - 13.1.2 The coverage provided by the CGL policy shall not be excess or contributing with respect to City's self-insurance or any pooled risk arrangements.
 - 13.1.3 The CGL policy shall provide \$1,000,000 combined single limit coverage for owned, hired and non-owned automobile liability.
 - 13.1.4 The CGL policy shall include coverage for liability undertaken by contract, covering, to the maximum extent permitted by law, VLI's obligation to

indemnify City as required under the Indemnity provisions of this Agreement.

13.1.5 The CGL policy shall not exclude coverage for Completed Operations Hazards.

13.1.6 City and its officers, officials, agents and employees shall be named as additional insureds in an endorsement to the CGL policy.

13.1.7 The CGL policy shall be issued by an insurance company licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (or the equivalent by any other rating agency) and a rating of "A:VII" or better in the current Best's Insurance Reports.

13.1.8 VLI shall provide City with at least 30-days' prior written notice of any modification, reduction or cancellation of the CGL policy and a minimum of 10-days' notice for cancellation of the policy due to non-payment.

13.1.9 City may increase the scope or dollar amount of coverage required under the CGL policy, or may require different or additional coverages, upon prior written notice to VLI to be provided no later than September 1st of each year.

13.2 Acceptance by City of the insurance policy required by this section does not waive any of the indemnification rights City may have pursuant to Section 14.

Section 14. INDEMNITY

14.1 To the fullest extent permitted by law, VLI shall indemnify, defend (at VLI's sole expense, with legal counsel approved by City), and hold harmless City and its officers, officials, agents, and employees (hereinafter, individually, "Indemnitee" or, collectively, "Indemnitees"), from and against all losses, damages, costs, expenses, liabilities, claims, demands, suits, attorneys' fees and judgments arising directly or indirectly from, or in any manner connected to this Agreement. This indemnification includes, but is not limited to, all losses, damages, costs, expenses, liabilities, claims, demands, suits, attorneys' fees and judgments arising directly or indirectly from the acts of any third-party collections agent performing collection services pursuant to the provisions of Section 4.

14.2 Notwithstanding the foregoing, nothing herein shall be construed to require VLI to indemnify a specific Indemnitee from any claim arising from the sole negligence or willful misconduct of that specific Indemnitee; provided, however, VLI's obligation to indemnify, defend and hold harmless shall remain as to all other Indemnitees.

14.3 The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to VLI of a claim within the potential

scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of VLI, City or any Indemnitee.

- 14.4 In the event VLI or City are sued by a third party for damages arising or allegedly arising from this Agreement, VLI shall not be relieved of its indemnity obligation to City by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against City.

Section 15. ASSIGNMENT

VLI covenants and agrees it will not assign or transfer its rights under this Agreement, either in whole or in part, without first obtaining the written consent of City, which consent may be granted or denied at the sole and absolute discretion of City. Any attempt by VLI to assign or transfer its rights or obligations without such prior written consent shall be null and void and may, at the option of City, automatically terminate this Agreement.

Section 16. ASSETS OF THE LTID

In the event the LTID is disestablished or otherwise discontinued, the existing assets of the LTID shall only be used and refunded in accordance with the PBIDL.

Section 17. SEVERABILITY

If any clause, provision, or section of the Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 18. WAIVER

Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

Section 19. SECTION HEADINGS

The section headings of the Agreement are for convenience and reference only, and shall in no way be deemed to define, limit or add to the meaning of any provision of the Agreement.

Section 20. GOVERNING LAW/COMPLIANCE WITH LAWS

The Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The parties hereto agree to be bound by all federal, state and local laws, ordinances, regulations and directives pertaining to the services to be performed hereunder. All disputes arising hereunder shall be resolved in Santa Barbara County.

Section 21. COUNTERPARTS

The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 22. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between City and VLI regarding the subject matter herein and supersedes any and all prior negotiations, representations or agreements, either oral or written.

IN WITNESS WHEREOF, this Agreement is executed by City, acting by and through its City Manager, and VLI, acting by and through its President and Vice-President or Secretary.

APPROVED AS TO FORM:

CITY OF LOMPOC, a municipal corporation

Joseph W. Pannone
City Attorney

By _____
Jim Throop
City Manager

Date _____

ATTEST:

Stacey Haddon. City Clerk

VISIT LOMPOC, INC., a California nonprofit, public benefit corporation

By _____
Pankaj Patel,
President

Date _____

By _____

Its: _____

Date _____

Exhibit A

VLI Budget

Estimated Annual Budget If Maximum Assessment Rates Are Adopted 2019-2028

Year	Sales & Marketing	Administration	City Fee	Contingency / Reserve	TOTAL
%	85%	10%	1%	4%	100%
2019	\$306,000.00	\$36,000.00	\$3,600.00	\$14,400.00	\$360,000.00
2020	\$472,770.00	\$55,620.00	\$5,562.00	\$22,248.00	\$556,200.00
2021	\$647,647.62	\$76,193.84	\$7,619.38	\$30,477.54	\$761,938.38
2022	\$833,846.31	\$98,099.57	\$9,809.96	\$39,239.83	\$980,995.66
2023	\$858,861.70	\$101,042.55	\$10,104.26	\$40,417.02	\$1,010,425.53
2024	\$884,627.56	\$104,073.83	\$10,407.38	\$41,629.53	\$1,040,738.30
2025	\$911,166.38	\$107,196.04	\$10,719.60	\$42,878.42	\$1,071,960.45
2026	\$938,501.37	\$110,411.93	\$11,041.19	\$44,164.77	\$1,104,119.26
2027	\$966,656.41	\$113,724.28	\$11,372.43	\$45,489.71	\$1,137,242.84
2028	\$995,656.11	\$117,136.01	\$11,713.60	\$46,854.41	\$1,171,360.13
TOTAL	\$7,815,733.47	\$919,498.06	\$91,949.81	\$367,799.22	\$9,194,980.56