

# Memorandum



CITY OF DALLAS

DATE November 8, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **Agenda Item #60, November 13, 2019 - Amended & Restated VisitDallas Contract**

Attached for your information is a draft copy of the amended and restated contract with VisitDallas, which is scheduled for City Council consideration on November 13, 2019, as well as a contract amendment summary sheet and additional updates in response to questions from City Council Members.

As briefed to City Council on October 16, 2019, this amended and restated contract does not extend the term of the existing contract and will expire September 30, 2020, but rather clarifies definitions, sets deadlines, and the process for performance metrics, in response to the January 2019 audit.

Once this contract is complete, staff will begin negotiations with VisitDallas for a 5-year renewal option. We will brief the GPFM committee in early 2020, before any action is scheduled. If we successfully negotiate an extension, City Council action is forecasted for May 2020.

Additionally, we have requested definitive responses from VisitDallas on their total revenue, personnel expenditures and salary information, and will keep you updated as they provide responsive information before Wednesday.

The VisitDallas board voted and approved the new 21-member structure on October 23, 2019. This change does not appear in the draft contract because the board and its composition are governed through the organization's bylaws.

Furthermore, the amended and restated contract now sets deadlines for submitting and tracking performance measures. Our improved contract management procedures set the process for formal City approval of VisitDallas' performance goals and the City will hire an independent third party to analyze VisitDallas performance goals and metrics.

Lastly, the draft contract does not yet specifically prohibit marketing and sponsoring events outside of Dallas. The scope in the contract does make specific references to events "within the city of Dallas with a primary focus on the KBHCCD" and it was our intent to develop a policy to enforce that. Nevertheless, staff is developing a new and more explicit provision to be added in the contract before the vote next Wednesday.

We will continue to provide updates to ensure you receive the information you request in advance of the meeting next Wednesday.

DATE November 8, 2019

SUBJECT **Agenda Item #60, November 13, 2019 - Amended & Restated VisitDallas Contract**

Should you have questions or comments, please contact me or Rosa Fleming, Director of Convention and Event Services, prior to next Wednesday.



Joey Zapata  
Assistant City Manager

### Attachment

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|--|---|
| T.C. Broadnax, City Manager                                | Jon Fortune, Assistant City Manager                                       |
| Chris Caso, City Attorney (Interim)                        | Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer |
| Mark Swann, City Auditor                                   | Michael Mendoza, Chief of Economic Development and Neighborhood Services  |
| Biliera Johnson, City Secretary                            | M. Elizabeth Reich, Chief Financial Officer                               |
| Preston Robinson, Administrative Judge                     | Laila Alequresh, Chief Innovation Officer                                 |
| Kimberly Bizer Tolbert, Chief of Staff to the City Manager | M. Elizabeth (Liz) Cedillo-Pereira, Chief of Equity and Inclusion         |
| Majed A. Al-Ghafry, Assistant City Manager                 | Directors and Assistant Directors   |

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

**AMENDED AND RESTATED CONTRACT BETWEEN THE CITY OF DALLAS AND THE DALLAS CONVENTION & VISITORS BUREAU DBA VISITDALLAS FOR CONVENTION AND PUBLIC EVENT FACILITY PROMOTION, ADVERTISING AND TOURISM DEVELOPMENT SERVICES**

**THIS AMENDED AND RESTATED CONTRACT** (“Contract”) is entered into by and between the City of Dallas, a Texas municipal corporation of Dallas County, Texas (“City”), acting by and through its authorized officers, and The Dallas Convention & Visitors Bureau dba VisitDallas, a Texas nonprofit corporation, acting by and through its authorized officers (“VisitDallas”).

WITNESSETH:

**WHEREAS**, the City wants to continue to aggressively promote convention, arts, cultural, leisure, sports, film and destination tourism and market the city of Dallas as a major meeting site and a visitor’s destination and, to promote the use of public facilities within the city with a primary emphasis on the Kay Bailey Hutchison Convention Center Dallas (“KBHCCD”) and its abutting outdoor spaces; and

**WHEREAS**, Section 44-35 of the Dallas City Code, as amended, provides for a Hotel Occupancy Tax (“HOT”) and for the allocation of a portion of the City’s HOT revenues to be used for advertising and conducting solicitations and promotional programs to acquaint potential users with public meeting and convention facilities; and, for promoting convention, arts, cultural, leisure, sports, film and destination tourism and advertising of the City, either by the City or through contracts with persons or organizations selected by the City; and

**WHEREAS**, since September 25, 1996, VisitDallas has provided convention facility promotion, advertising and tourism development services to the City; and

**WHEREAS**, by Resolution No. 09-2672, the City Council authorized the transfer of the Dallas Film Commission’s functions to the City, and VisitDallas agreed to support the City’s efforts to market and promote the city of Dallas as a desirable location for the entertainment industry (i.e., film, television, digital image and others; and

**WHEREAS**, the City desires to return the functions of the Dallas Film Commission to VisitDallas effective upon approval of this Amended and Restated Contract; and

**WHEREAS**, the City desires to continue to utilize the services of VisitDallas to perform professional activities to manage and supervise the promotion, stimulation, and development of conventions and tourism in the city of Dallas; and to acquaint potential users and visitors with public meeting and convention facilities within the city, with a primary emphasis on the KBHCCD, as well as promoting the city as a convention, arts, cultural, leisure, sports, film and destination tourist attraction, notwithstanding the option of reserving the right of the City to undertake a portion of such activities which in the City’s opinion, may be necessary and convenient to its operations; and

**WHEREAS**, on September 9, 2015, by Resolution No. 15-1666, City Council authorized a new contract with VisitDallas for convention facility promotion, advertising and tourism development services from October 1, 2015 to September 30, 2020, as amended and restated herein in accordance with City Council resolution approved on November 13, 2019, attached hereto.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein, it is mutually understood and agreed as follows:

## **SECTION I. DEFINITIONS**

**City Approval:** approval from the City Manager’s Office or the Director (defined herein) shall constitute City Approval.

**Citywide:** a single event/convention/meeting with a minimum of 2,500 room nights on peak and an executed agreement (letter of agreement, memorandum of understanding, or facility use agreement) with a City-owned Facility.

**City-owned Facilities:** facilities owned and/or operated by the City of Dallas including but not limited to Fair Park, the Eddie Bernice Johnson (EBJ) Union Station, City-owned cultural facilities and the American Airlines Center.

**Convention Facilities:** facilities that are primarily used to host conventions and meetings, which shall include, but are not limited to, the KBHCCD and Fair Park.

**Dallas Convention Center Hotel:** convention center hotel owned by the City of Dallas and operated by a private manager.

**Dallas Film Commission:** the official film commission for the greater Dallas area, is a division of the City of Dallas, Office of Economic Development until October 22, 2019, and will be transferred back to VisitDallas upon approval of this Amended and Restated Contract.

**Dallas Film Commission Production Directory:** provides clients and producers with information on local film, television, entertainment and creative industry professionals and support services.

**Dallas Sports Commission:** a division of VisitDallas and an organization that attracts, retains and supports sports entertainment events that position Dallas as a premier sports destination.

**VisitDallas Annual Commitment:** VisitDallas’s annual transfer for the Dallas Film Commission in consideration of transferring the functions of the Dallas Film Commission to the City through September 30, 2019. This Annual Commitment ceases upon approval of this Contract.

**Director:** shall mean the Director of Convention and Event Services and/or the Director of the Office of Economic Development.

**Facility Use Agreement:** an agreement between a client and the KBHCCD for the use of space.

**Fiscal Year:** a one-year period beginning October 1<sup>st</sup> and ending September 30<sup>th</sup>.

**Hotel Occupancy Tax (“HOT”):** a tax imposed by the City on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the

use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping. The HOT may not exceed seven percent of the price paid for a room in a hotel or short-term rental.

**Hotel Operating Agreement:** the operating agreement between the Dallas Convention Center Hotel Development Corporation (DCCHDC) and Omni Hotels Management Corporation for the operation and management of the Dallas Convention Center Hotel.

**Program Activity Payments:** payments made directly by VisitDallas for marketing, entertainment and other costs related directly to Dallas Film Commission activities through September 30, 2019.

**Room Night:** one hotel room or short-term rental occupied for one night, within the city limits of Dallas.

**Tourism:** Persons or groups traveling to Dallas for convention, arts, cultural, sports, film, industry, leisure or destination purposes.

**Tourism Public Improvement District (“TPID”) Fund:** a fund managed by VisitDallas that provides services and improvements which is funded by a special assessment levied by the City on Dallas hotels with 100 or more rooms, in accordance with Section 372 of the Local Government Code.

## SECTION 2. SCOPE OF WORK

**A. VisitDallas Advertising, Marketing and Solicitation Services.** VisitDallas agrees to market, advertise, promote and solicit through various sales programs, to acquaint potential users and prospective tourists with public meeting, arts, cultural, leisure, sports, film, destination and convention facilities and other attractions within the city of Dallas with a primary focus on the KBHCCD. The Contract shall be administered by the Director. VisitDallas shall work closely with the Director and the appropriate City officials in the performance of the services required under this Contract. VisitDallas specifically agrees to develop and administer a program for advertising, marketing, promoting and soliciting, which overall program will embody the following:

- 1) VisitDallas will solicit, arrange for, and service conventions, and publicize the city of Dallas to attract convention, arts, cultural, leisure, sports, film and destination visitors to the KBHCCD and to other City-owned facilities, including arts and cultural facilities, as directed. Notwithstanding the foregoing, the City and VisitDallas recognize that potential customer needs may be better suited to be held at another City facility or other facilities located in Dallas, Texas, including but not limited to Fair Park, the Eddie Bernice Johnson (EBJ) Union Station, City-owned cultural facilities and the American Airlines Center. In such a case, VisitDallas and the City will agree on the use or the method of marketing the competing facilities to best develop, stimulate and promote conventions and tourism within the city of Dallas;
- 2) VisitDallas will detail funding and prepare a budget, marketing plan and strategic plan by March 1<sup>st</sup> of each fiscal year for approval by the Director and for use in the development of the Convention and Event Services annually appropriated City budget and HOT allocation. VisitDallas will provide a mid-year budget adjustment in the applicable fiscal year to provide more accurate forecasts of their specific uses for:
  - (a) Administrative costs related to City staff for facilitating and assisting with conference registration and other activities
  - (b) Advertising, solicitation, and promotion activities that attract tourists and convention delegates to City-owned facilities and their vicinities

- (c) Provide marketing services to promote Dallas as an ideal destination for meetings and conventions, arts, cultural, leisure, sports, film and destination tourism
  - (d) Promotional expenses directly related to sporting events and sports-related tourism, including e-sports and other emerging competitive events
  - (e) Transportation initiatives for convention delegates
  - (f) Signage promoting and directing convention, arts, cultural, leisure, sports, film and destination tourists to City-owned facilities
  - (g) The development of metrics and performance measures for room nights, citywide bookings, personnel salary incentives and other activities included in VisitDallas strategic plan. These metrics, measures, and incentives will be presented in VisitDallas Strategic Plan prepared by March 1<sup>st</sup> annually and approved by the City
- 3) VisitDallas will develop metrics and goals annually by March 1st of each fiscal year in alignment with the City's budget process. These metrics and goals will be designed to maximize hotel room bookings and room tax revenues through conventions, meetings, events, arts, cultural, leisure, sports, film and destination tourism promotion, and will track and provide quarterly updates related to these goals no later than the 30th day of the month following the end of each quarter;
- 4) VisitDallas will maximize the utilization of all the City's convention and meeting facilities through solicitation and booking of conventions, tradeshow and meetings;
- 5) VisitDallas will maintain a membership list from within the hospitality industry and include a membership list in its annually submitted Strategic Plan;
- 6) VisitDallas will assist visitors seeking lodging accommodations, and information. VisitDallas will develop and maintain metrics and performance measures related to planned lodging accommodations by client/event; and, provide actualized reports not less than 120 days post-event completion;
- 7) VisitDallas will publish or digitize standardized informational and promotional brochures for visitors and potential visitors to Dallas. These will be outlined in VisitDallas Strategic Plan that is approved annually by the Director;
- 8) VisitDallas will personally visit and solicit customers as detailed in VisitDallas City-approved Strategic Plan, and provide an actualized list of these visits and associated costs in an end-of-year report no later than December 30<sup>th</sup> annually;
- 9) VisitDallas will design and develop displays, banners, posters, audio visual presentations and other advertising tools for use in encouraging convention planners and organizations to meet in Dallas, and promote maximum attendance of non-City residents and future events scheduled in the city of Dallas; these will be outlined in VisitDallas Strategic Plan and approved by the Director and will also be included in an end-of-year report due no later than December 30<sup>th</sup> annually detailing actualized costs;
- 10) VisitDallas will develop a consistent effective advertising/branding no less than every five years on behalf of Dallas as a convention city, to be placed in selected advertising media having proven influence with organizations seeking convention sites, and such campaign and any modifications shall be approved by the City and the City reserves the right to use such campaign and/or its likeness, without notice or permission from VisitDallas;

- 11) If the City begins utilization of the VisitDallas logo, VisitDallas will not change the logo without obtaining written consent from the City;
- 12) VisitDallas will promote the City as a convention, arts, cultural, leisure, sports, film and destination tourist and visitor destination, which shall include, but is not limited to, promoting Dallas as a desirable location for the entertainment industry. Such promotional activities will be detailed in VisitDallas Strategic Plan and will be included in an end-of-year report due no later than December 30<sup>th</sup> annually detailing actualized promotional activity;
- 13) VisitDallas will reimburse the City for the expenses involved in the convention industry promotion and sales of the KBHCCD and other City-owned facilities, as agreed to in writing prior to the expenditure by the City and the VisitDallas;
- 14) VisitDallas will transfer 0.9%, or an amount not to exceed **FIVE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED NINETY AND N0/100 (\$596,690.00) DOLLARS**, from its HOT allocation and transfer such funds to the Office of Arts and Culture for fiscal year 2019-2020. Subject to state and local law requirements, as amended, such funds may be used to supplement cultural projects and historic restoration and preservation projects that directly enhance and promote tourism and the convention and hotel industry in Dallas. Eligible projects may include promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums located in the immediate vicinity of the convention center or located elsewhere in the city or its vicinity that are frequented by tourists and convention delegates;
- 15) VisitDallas will market/promote City-owned arts and cultural facilities and City supported events as venues for meetings, conventions, trade shows, or other special events. Promotional activities will be detailed in VisitDallas Strategic Plan and approved by the Director;
- 16) VisitDallas will, in keeping with the City's efforts toward advancement of diversity and inclusion, continue its marketing and sales programs related to securing multi-cultural conventions, tradeshows and activities;
- 17) VisitDallas, in cooperation with the KBHCCD and any contracted management company associated with the KBHCCD, will work to maximize the utilization of the KBHCCD consistent with the capital improvements program to continue major renovations and improvements to the KBHCCD as well as shall take all commercially reasonable steps to secure users of the KBHCCD, which may include co-signing the City's Facility Use Agreement, for the purpose of indemnifying or safeguarding such users against any and all existing or future loss liability; and
- 18) VisitDallas will continue its sports marketing program, through the Dallas Sports Commission designed to sell and market Dallas as a venue for sporting events, including e-sports and other emerging competitive events. The primary focus of the Dallas Sports Commission will be those sporting events which have a minimum impact of 750 room nights per sporting event.

**B. VisitDallas Reporting Requirements.** In order for the City to monitor the performance of VisitDallas, VisitDallas shall prepare and submit all data, reports and other documents as may be requested by the Director. The format and information required shall be satisfactory to the Director. Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of VisitDallas, its employees, agents, associates or subcontractors for the accuracy and competency of the reports or other deliverables, information and other documents or services, nor shall such approval be deemed to be the assumption of any responsibility by the City for any defect, error or omission in the deliverables prepared

by VisitDallas, its employees, agents, associates of subcontractors. The City may review and request clarifications of VisitDallas records or documents provided to the City in compliance with these provisions. At a minimum, VisitDallas shall:

- 1) Submit an annual report of activities and results of the program for the previous year no later than 90 days after the close of the City's Fiscal Year. The report shall include, but is not limited to:
  - a. a detailed breakdown of advertising, promotion, client, Dallas Film Commission activities, marketing, and public relations activities undertaken in the preceding fiscal year
  - b. a summary of financial and citywide economic impact benefits obtained by convention, arts, cultural, leisure, sports, film or destination tourism related initiatives undertaken in the preceding fiscal year using and citing an industry-standard formula or source
  - c. a detailed breakdown of advertising and promotional activities undertaken on behalf of the KBHCCD in the preceding fiscal year
  - d. Generally Accepted Accounting Principles (GAAP) formatted financial reports pertinent to the scope of the work required by the City
- 2) Submit a completed Form 990 annually – draft by April 1st and finalized copy by May 15th;
- 3) Schedule an annual review of adopted formal procedures for expense and revenue documentation, board orientation, compensation of key leadership positions, employee incentive compensation with the Director;
- 4) Provide a quarterly report on VisitDallas's progress towards meeting their performance goals. Performance goals may include, but are not limited to the number of Citywide conventions, total room nights, and Dallas Film Commission activities, marketing, and media goals. Such performance goals shall be set by VisitDallas's Board of Directors and submitted to the Director for approval for the ensuing Fiscal Year no later than March 1st annually. Performance goals may be revised, with the approval of VisitDallas's Executive Board and the Director, based on market and unforeseen factors out of VisitDallas's control;
- 5) Meet with the City on a regularly scheduled monthly basis to discuss VisitDallas's budget, programs and services hereunder, and any adjustments or corrections required;
- 6) Provide various monthly, quarterly and annual reports, as agreed to by the Director in an industry standard format suitable for data analysis, such as Excel, including but not limited to:
  - a. Definite, tentative and actualized (consumed) room night activity.
  - b. Economic impact
  - c. Marketing report, detailing advertising, promotional, direct marketing, trade show, research, public relations, Dallas Film Commission activities, and e-marketing efforts and outcomes related to the city of Dallas, including a breakout of those efforts related to the convention center and other City-owned facilities, including City-owned cultural facilities
  - d. Sales report, including sales activity, site visits, new leads, definite and tentative and actualized bookings, lost business report with reason for loss, and planned activities;
- 7) Financial statements, bank balances, and cash flows showing updated expenditures and revenues. The monthly financial statement package including balance sheet, and statement of activities shall be maintained and presented in compliance with Generally Accepted Accounting Principles (GAAP) for non-profit corporations. Financial statements and cash flows will provide explanations for all variances of 5% or greater from the submitted budget;



- 8) Financial statements will show any revenue balances from HOT that carry forward and any earned interest based on the carry forward. Any funds not expended or obligated to an activity outlined in the Strategic Plan, Marketing or Comprehensive Plan, or annually submitted budget will be returned to the City for distribution for capital needs at the KBHCCD or other eligible activity as outlined by the ordinance;
- 9) Submit an annual budget, marketing plan, strategic plan and comprehensive program of action for the ensuing Fiscal Year no later than March 1st annually. VisitDallas will provide a mid-year budget adjustment with an updated forecast for the budget and submitted plans. The comprehensive program will be in a form which includes goals and measurable performance objectives (including a plan to attract multi- cultural/minority oriented, owned, or operated conventions, tradeshow, or meetings to the City). At a minimum, the annual budget will provide a listing of revenue and expenditures for all activities relative to this Contract; and submit a quarterly report to the Director detailing all expenditures, alignment with the submitted budget and strategic plan and variances no later than the 30th day of the month following the end of each quarter an agreed-upon GAAP standard and editable formatting, and correlate performance objective update;
- 10) Submit to the City unaudited quarterly statements (and upon request, monthly statements) of operations under this contract and audited annual statements of operations under this contract reflecting in each case receipts, disbursements and such other information as may be required to accurately disclose its operations during the preceding quarter, month or year, as the case may be, or as may be reasonably requested by the City, in such form and containing such information satisfactory to the City for approval; and
- 11) Upon request of the City or the Director, present briefings on VisitDallas's budget, activities, and performance goals.

**C. Dallas Film Commission.** Upon approval of this Amended and Restated Contract, the Dallas Film Commission including all functions and City of Dallas personnel shall be transferred to VisitDallas. VisitDallas will no longer be required to pay the Annual Commitment and Program Activity Payments to the City upon completion of the transition. The transition of City of Dallas personnel may span a period of up to 60 days. VisitDallas shall pay or reimburse all expenses for the transition.

**D. City Approval of CPA Firm.** VisitDallas shall annually submit to the City, by January 30th, for its approval (in advance of its engagement) the list of certified public accounting firms proposed by VisitDallas to be employed to prepare audited financial statements from the previous year's activities with specific details relating to use of the HOT. Such firm(s), once approved by the City, shall not require further approval during the fiscal year of engagement unless the City shall thereafter object in writing not later than thirty (30) days prior to VisitDallas's fiscal year. VisitDallas's fiscal year shall coincide with the City's Fiscal Year and begin on the first day of October of each year and shall end on the 30th day of the following September.

**E. VisitDallas Budget, Marketing Plan, Strategic Plan and Comprehensive Program.** All expenditures by VisitDallas for the services authorized hereunder shall be within and in accordance with the submitted and approved budget, marketing plan, strategic plan and comprehensive program, which may be a combined document with the exception of the budget, approved by the Director, and VisitDallas will be so notified in writing by the City as to the acceptance of the specific activities proposed by VisitDallas in their budget submittal, for the specific year involved. VisitDallas will submit these documents for approval by March 1st annually, and the City will respond no later than April 1st annually.

**F. VISITDALLAS Bookings.** VisitDallas will have the primary responsibility for marketing all of the City's convention facilities for convention and trade shows, and will have control and responsibility over all bookings more than 18 months in advance, with the following exception: any booking with the Dallas Convention Center Hotel will be for more than 24 months in advance per the city's Hotel Operating Agreement. In addition, the KBHCCD contracted management company will receive 10 exceptions (not to exceed the 24-month window) to the 18-month booking window per rolling calendar year. However, all such bookings shall be coordinated with the KBHCCD prior to commitment, and written approval of acceptance by the KBHCCD must be obtained. VisitDallas will also book conventions and trade shows into the convention facilities with less than 18 months lead time if the dates have not been confirmed to other users and upon written co-signed approval of the KBHCCD management company and the Director, which approval shall not be unreasonably withheld.

### **SECTION 3. HOT PAYMENTS AND VISITDALLAS CAPITAL CONTRIBUTIONS**

**A. Hotel Occupancy Tax.** Subject to the nonexclusive option provisions in Section 9, the City shall pay VisitDallas an amount up to 30.0 percent of the City's HOT during the City's current Fiscal Year (less the net of any portion of HOT generated at the Dallas Convention Center Hotel). The HOT payments will be made monthly based on actual funds received from the state. The City will retain an amount equal to 3.0 percent of the payment due to VisitDallas per month. If VisitDallas complies with the performance goals outlined in Section 2(B)(4), then the City will pay the retainage quarterly to VisitDallas. If VisitDallas meets or exceeds their performance goals by the end of the year, then the City will pay any retainage remaining to VisitDallas. The City shall make a final determination of the actual HOT revenues received for the Fiscal Year at the close of the City's Fiscal Year. VisitDallas shall adjust its budget to reflect actual monies received.

**B. Short Term Rental (STR) Hotel Occupancy Tax (HOT).** The City's HOT revenues will include the collection of STR HOT received from the state.

**C. Reserve Funds.** At no time will VisitDallas maintain a reserve fund of Hotel Occupancy Tax. Any unexpended or unobligated HOT funds remaining at year end shall be remitted to the City. Alternatively, the Director may approve a carryforward of HOT to the following year of such excess HOT funds for specific projects or reduce VisitDallas's allocation of HOT to absorb such excess collections in the following year.

**D. VisitDallas Mission.** VisitDallas's primary mission under this contract is to sell, market, advertise and promote Dallas as a destination for conventions, meetings, tradeshow, and convention, arts, cultural, leisure, sports, film and destination tourism with primary emphasis on the KBHCCD and its outdoor spaces. The City retains the right subject to state and local law restrictions governing the use of HOT to amend this Contract at a future date to address any issues which may arise.

**E. State and Local Law Restrictions.** Notwithstanding anything contained herein, the allocation and expenditure of the HOT for the purposes as set forth in this Contract shall be subject to the state and local law restrictions governing the use of HOT.

**F. Additional Capital Contributions.** VisitDallas shall pay the City **FIVE HUNDRED THOUSAND AND NO/100 (\$500,000.00) DOLLARS** annually on January 1st of each of the following years: 2016-2020; and upon renewal (subject to City Council approval) on January 1st of each of the following years: 2021-2025 and 2026-2028. These funds shall be used by the City of Dallas for capital improvements at the KBHCCD or its abutting outdoor spaces, as determined by the Director. This obligation shall not be paid from Tourism Public Improvement District Funds unless such capital

improvements are authorized by the property owners by future TPID petition. The time period for performing this obligation may be extended with the written permission of the Director, for good cause shown by VisitDallas no later than March 1st of each fiscal year. Any unpaid portion of this obligation shall be due and payable to the City upon the termination or expiration of this Contract, and this obligation shall survive the termination or expiration of this Contract until the obligation is satisfied.

**G. Dallas Film Commission Target Deliverables.** Deliverables will be related to growing the creative economy and to impact the overall local economy while building awareness of the City. VisitDallas will create a marketing plan that identifies goals and objectives to support the success of Dallas Film Commission, create an annual report for key stakeholders that communicates the progress, impact and value of the commission, and maintain a current Dallas Film Commission Production Directory of creative resources to improve the impact the Dallas Film Commission has on the local creative economy.

**H. Dallas Film Commission Revenues.** VisitDallas will administer and separately account for any Dallas Film Commission funds received from external sources such as revenues derived from production companies or other vendors for advertising in the Dallas Film Commission's Production Directory or any other partnerships, membership, gifts, grants or donations.

**I. Dallas Film Commission Revenue.** VisitDallas shall administer the Dallas Film Commission revenues and any unexpended funds shall be held or transferred to the City and are not subject to expiration.

#### **SECTION 4. CHANGE IN SERVICES**

The promotional activities of VisitDallas shall not be limited to those set forth in **SECTION 2** above, and the City can request additional programs or modifications to the programs set forth herein; provided however, that any modification of changes in the program by the City shall take into consideration the amount agreed to in this Contract, and shall not require any additional funding. Changes in the scope of services, which in the opinion of VisitDallas and the Director would require additional funding by the City, must first be authorized in advance by resolution of the City Council.

#### **SECTION 5. TERM**

The term of this Contract is for a period of five (5) years, beginning on October 1, 2015, and ending on September 30, 2020, with one five-year renewal option and one three-year renewal option, each renewal option shall be subject to City Council approval.

#### **SECTION 6. COMPETENT EMPLOYEES**

VisitDallas hereby represents that it shall use only its employees, members or agents to undertake the work set forth herein and that such employees, members and agents shall be competent to perform the work and the promotional activities required hereunder.

#### **SECTION 7. NOTICES**

Except as otherwise provided in **Section 25**, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses

appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to: City Manager  
City of Dallas  
City Hall, Room 4/E North 1500 Marilla Street  
Dallas, Texas 75201

with a copy to:  
Director, Convention and Event Services Department  
City of Dallas 650 South Griffin  
Dallas, Texas 75201

If related to TPID or the Dallas Film Commission:  
Office of Economic Development / Director City of Dallas  
City Hall, 5C South 2/C North 1500 Marilla Street  
Dallas, Texas 75201

If intended for VisitDallas or the TPID to:  
President, The Dallas Convention and Visitors Bureau  
325 N. St. Paul Street, Suite 700  
Dallas, Texas 75201

with a copy to:  
CFO, The Dallas Convention and Visitors Bureau  
325 N. St. Paul Street, Suite 700  
Dallas, Texas 75201

## **SECTION 8. OWNERSHIP OF DOCUMENTS**

Upon acceptance or approval by City, all reports, information and other data, given to, prepared or assembled by VisitDallas under this Contract and other related documents or items shall become the sole property of City and shall be delivered to City, without restriction on its use. VisitDallas may make copies of any and all documents for its files. By execution of this Contract, VisitDallas hereby conveys, transfers and assigns to City, all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the designs and data developed under this Contract. VisitDallas, its agents and employees, shall be responsible to City for any loss or damage to City documents, while they are in the possession of, or while being worked upon, by VisitDallas or anyone connected with VisitDallas. All City documents so lost or damaged shall be replaced or restored by VisitDallas at its sole expense.

## **SECTION 9. OPTION RESERVED**

This Contract is non-exclusive and shall not be construed so as to deny the City its option to enter into a similar contract with other consultants, companies, or individuals. The City retains the right, at its option, to enter into contracts with other entities for same or similar services as enumerated herein. The City will notify VisitDallas of any required changes in VisitDallas' allocation of HOT to accommodate the transfer of services pursuant to contractual commitments with other entities and will give VisitDallas sufficient advance notice of such changes.

## **SECTION 10. DEFAULT BY VISITDALLAS**

If VisitDallas shall fail or refuse to perform any term, covenant, or condition of the Contract and shall fail to cure such default within sixty (60) days after written notice from the City (or, for defaults not reasonably curable within 60 days, as determined in the sole discretion of the Director, within a reasonable time for the curing of such default and such reasonable time shall also be determined in the sole discretion of the Director; provided that VisitDallas promptly commences and is diligently pursuing such cure), then the City may terminate this Contract, by giving VisitDallas written notice of its election to terminate, which notice shall specify the date that all services being performed by VisitDallas hereunder shall cease.

## **SECTION 11. TERMINATION**

Either party hereto may, at its option and without prejudice to any other remedies the parties may be entitled to at law, in equity or elsewhere under this Contract, terminate further work under this Contract in whole or in part for cause or for convenience by giving at least sixty (60) days advance written notice of termination to the other party, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. City also has the right to request that VisitDallas assign and transfer to City all of VisitDallas' rights and obligations under existing subcontracts it has to perform contract work in the event of termination under this Section. City shall compensate VisitDallas in accordance with the terms of this Contract for work properly performed prior to the date of termination specified in the notice, following inspection and acceptance of same by the Director. VisitDallas shall not however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate.

## **SECTION 12. INDEPENDENT CONTRACTOR**

VisitDallas's status shall be that of an independent contractor and not an agent servant, employee, or representative of City in the performance of the services under this Contract. VisitDallas shall exercise independent judgment in performing services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of VisitDallas in the performance of this Contract shall be construed as making VisitDallas the agent servant or employee of City, or making VisitDallas or of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

## **SECTION 13. INDEMNITY**

**VISITDALLAS AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY VISITDALLAS' BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF VISITDALLAS, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONSULTANTS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS, AND IN THE EVENT OF JOINT AND CONCURRING**

**NEGLIGENCE OR FAULT OF VISITDALLAS AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. VISITDALLAS AND CITY ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS SECTION 13 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE TERM OF THIS CONTRACT.**

#### **SECTION 14. INSURANCE REQUIREMENTS**

**A. Minimum Insurance Requirements.** VisitDallas shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to City, the minimum insurance coverage contained in **Exhibit A**, attached to and made a part of this Contract.

**B. VisitDallas Liability.** Approval, disapproval or failure to act by City regarding any insurance supplied by VisitDallas or its subconsultants shall not relieve VisitDallas of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of VisitDallas's insurer or any denial of liability by VisitDallas's insurer shall not exonerate VisitDallas from the liability or responsibility of VisitDallas set forth in this Contract.

#### **SECTION 15. SUBCONTRACTS**

Except as provided herein, VisitDallas may not subcontract any substantial part of the performance of its duties or projects under this contract without the prior written consent of the Director. Further, the City will be represented in any evaluation of deliberations concerning awarding of sub-contracts in the amount of \$100,000 dollars or more.

In the event VisitDallas subcontracts any portion of its work under this contract, the subcontract shall be in writing between VisitDallas and the subcontractor. All such subcontracts shall be enforceable by the City in the event of a default by VisitDallas hereunder. All such subcontracts shall be maintained by VisitDallas during the period of this contract and shall allow an inspection by the City upon request.

To the extent feasible with due allowance for the subjective nature of items to be performed pursuant hereto, VisitDallas shall employ a competitive bidding process for goods and services exceeding \$100,000, for the purpose of performing its obligations under this contract, and shall award its contracts or subcontracts to the bidder offering the best quality of goods or services at the lowest possible price.

Notwithstanding the above, VisitDallas may contract with other individuals, entities, suppliers, etc. in their efforts to fulfill their mission and the scope of services identified in this contract.

#### **SECTION 16. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION**

**A. Nondiscrimination.** VisitDallas shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual

orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. VisitDallas shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. VisitDallas shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. VisitDallas agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

**B. Equal Opportunity Employer.** VisitDallas shall, in all solicitations or advertisements for employees placed by or on behalf of VisitDallas, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

**C. Reporting.** VisitDallas shall furnish all information and reports required by the City Manager or his designee and shall permit the City Manager or his designee to investigate its payrolls and personnel records which pertain to current contracts with City for purposes of ascertaining compliance with this equal employment opportunity clause.

**D. Compliance Reports.** VisitDallas shall file compliance reports with City as may be required by the City Manager or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of VisitDallas, and must be in the form that the City Manager or his designee prescribes.

**E. Default.** If VisitDallas fails to comply with the equal employment opportunity provisions of this Contract, it is agreed that City at its option may do either or both of the following:

- (1) Cancel, terminate or suspend this Contract in whole or in part;
- (2) Declare VisitDallas ineligible for further City contracts until it is determined to be in compliance.

**F. Bid Requirements.** VisitDallas shall make good faith efforts to comply with the City's Business Inclusion and Development ("BID") Plan a copy of which is available upon request. VisitDallas shall make a good faith effort to achieve participation in all contracts and expenditures by certified minority/women-owned business enterprises ("M/WBE") and meeting all reporting requirements for such.

## SECTION 17. RIGHT OF REVIEW AND AUDIT

VisitDallas shall keep, retain and safeguard all records relating to this Contract or work performed sufficient to demonstrate proper expenditure of the amounts paid to it by the City, in such form and containing such information the City may request, for a minimum period of three (3) years from the date the term of this Contract expires, with full access allowed to authorized representatives of the city of Dallas, upon request, for purposes of evaluating compliance with this and other provisions of the Contract. City reserves the right to audit such records at its election at any time. Any payment, settlement, satisfaction, or release made or

provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

## **SECTION 18. CONFLICT OF INTEREST OF CITY EMPLOYEES**

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official or employee. Any violation of this section shall constitute malfeasance in office, and any city official or employee guilty thereof shall thereby forfeit the city official's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.

(e) This section does not apply to non-negotiated, form contracts for general city services or benefits if the city services or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(f) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)”

## **SECTION 19. GIFT TO PUBLIC SERVANT**

City may terminate this Contract immediately if VisitDallas has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, City may require VisitDallas to remove any employee of VisitDallas from the Services who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

## **SECTION 20. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become



fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

## **SECTION 21. ASSIGNMENT**

This Contract provides for unique services. VisitDallas, therefore, shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Director.

## **SECTION 22. SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties and their respective administrators, successors and, except as otherwise provided in this Contract, their assigns.

## **SECTION 23. VENUE**

The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

## **SECTION 24. COMPLIANCE WITH LAWS AND REGULATIONS**

This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Dallas, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. VisitDallas shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended and all applicable State and Federal laws, rules and regulations, as amended.

## **SECTION 25. NOTICE OF CONTRACT CLAIM**

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. VisitDallas shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

## **SECTION 26. GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

**SECTION 27. CAPTIONS**

The captions to the various clauses to this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

**SECTION 28. LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

**SECTION 29. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS**

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

Executed and effective as of the 13th day of November 2019, by the City acting through its City Manager, authorized by City Council Resolution No. 19-\_\_\_\_\_ approved on November 13, 2019, and VisitDallas acting through their authorized officials.

APPROVED AS TO FORM:  
CHRISTOPHER J. CASO  
Interim City Attorney

CITY OF DALLAS  
T.C. BROADNAX  
City Manager

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Assistant City Manager

RECOMMENDED BY DIRECTOR  
Convention and Event Services

CONTRACTOR:  
THE DALLAS CONVENTION & VISITORS  
BUREAU dba VISITDALLAS, a Texas  
nonprofit corporation

\_\_\_\_\_  
Rosa Fleming

By: \_\_\_\_\_  
\_\_\_\_\_  
(Type Name & Title)

Attachments:  
Authorizing Resolution Approved on November 13, 2019  
**Exhibit A – Insurance Requirements**

### VisitDallas Amended and Restated Contract Amendments

Contract Component	Major Contract Amendments – Definitions and Due Dates	Contract Section
Budget Due Date	March 1 <sup>st</sup> annually, with an opportunity for a mid-year adjustment to align with the City's budget development process	Sec. 2 (B) 9
Plan Due Date	Strategic, marketing, and goal-setting plans will be due March 1 <sup>st</sup> annually, with an opportunity for a mid-year adjustment	Sec.2 (A) 2
End-of-Year Report	December 30 <sup>th</sup> annually for a report that includes finalized data on prior fiscal year advertising, promotion, client, marketing, and other activities citywide and specifically for KBHCCD; financials and economic impact; and end-of-year financial data in GAAP format	Sec.2 (B) 1
Added reserve balance language	Request for revenue balances on HOT accounts, including carry-forwards and earned interest / recapture of reserve funds	Sec.3 (C)
Form 990	Draft on April 1st / final submittal on May 15th	Sec.2 (B) 2
Annual Review	Review of adopted formal procedures for expense and revenue documentation, board orientation, compensation of key leadership positions, employee incentive compensation	Sec.2 (B) 3
Added reporting language	Expanded the language for monthly reporting and sampling requirements to include post-event actualized room night activity, economic impact, arts / culture / cultural facilities marketing updates, financial statements with variance explanations at 5% differentials, and the provision of bank balances and cash flow statements	Sec.2 (B) 6 & 7
Added arts and culture language	VisitDallas to provide marketing services to promote Dallas as an ideal destination for meetings and conventions, arts, culture, sports, film, leisure and destination events	Sec.1 Definitions and throughout
Definition(s)	Tourism definition expanded to include convention, arts, cultural, sports, film, industry, leisure and destination	Sec.1 Definitions
Added arts and culture language for HOT allocations	Increase of 0.9% in FY20, from VisitDallas funds, for allowable HOT uses for arts, culture and preservation funding to 3.5% immediately	Sec.2 (A) 14
Creative Industries	Transition of the Dallas Film Commission (dba "Creative Industries") to VisitDallas upon approval of the Amended and Restated Contract	Sec.2 (C)
Retainage	Increased retainage from 2% to 3% held back monthly / paid quarterly based on contract compliance confirmation and data sampling (represents ~\$597k)	Sec.3 (A)