

AGREEMENT FOR CONVENTION & VISITORS BUREAU SERVICES

BETWEEN THE CITY OF SAN JOSE

AND

TEAM SAN JOSE

FROM JANUARY 1, 2012 TO JUNE 30, 2014

DATED: _____

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AGREEMENT FOR CONVENTION & VISITORS BUREAU SERVICES

BETWEEN

**THE CITY OF SAN JOSE
AND
TEAM SAN JOSE**

THIS AGREEMENT FOR CONVENTION & VISITORS BUREAU SERVICES (“Agreement”) is entered into this ____ day of _____ 2012, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and TEAM SAN JOSE, a nonprofit corporation of the State of California, doing business as the San José Convention and Visitors Bureau (“Team San Jose”).

RECITALS

A. On June 21, 2005, the City and the San Jose Convention and Visitor’s Bureau (“CVB”) entered into an agreement entitled “Second Amended and Restated Agreement between the City of San Jose and the San Jose Convention & Visitors Bureau from July 1, 2000 to June, 30, 2010” (“Prior Agreement”), for the CVB to promote the growth and enhancement of the community, encourage visitors to the City, and promote the holding of conventions, conferences, and trade shows in the City.

B. The Prior Agreement has been extended from time to time and is the under which the parties are currently operating.

C. On January 27, 2009, the City Council approved an Agreement for the Management of the San Jose Convention Center and Cultural Facilities (“Management Agreement”) with Team San Jose to provide for the management and operation of the following facilities for a five year term beginning July 1, 2009: San Jose McEnery Convention Center, Civic Auditorium, Parkside Hall, Center for the Performing Arts, Montgomery Theater, and California Theater (collectively the “Facilities”).

D. On February 1, 2009, Team San Jose and the former CVB merged into a single nonprofit entity, with Team San Jose being the surviving entity.

E. City and Team San Jose now desire to enter into an Agreement for Convention and Visitors Bureau Services for the period January 1, 2012 through June 30, 2014, in order to address the merger of Team San Jose and CVB, to make the term of this Agreement coincide with the term of the Management Agreement, and to make other changes as relates to the Convention and Visitors Bureau Services.

F. This Agreement supersedes the existing Prior Agreement, as extended, and is structured in term to align with the term of the Management Agreement.

G. The parties acknowledge that payments have been made under the Prior Agreement for the current Fiscal Year, and that such payments shall be accounted for as being expended under the Approved Budget which will be attached to this Agreement for the Fiscal Year ending June 30, 2012.

NOW, THEREFORE, in consideration of the following mutual promises, covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Team San Jose agree as follows:

Section 1. TERM OF AGREEMENT

- 1.1. INITIAL TERM. The term of this Agreement commences on January 1, 2012, regardless of date of execution, and, subject to the provisions of Section 17 expires at 11:59 p.m. on June 30, 2014 (“Initial Term”).
- 1.2. OPTIONS. City may elect to extend the term of this Agreement for two additional three year periods (each an “Additional Term”), based upon the same conditions of the Initial Term. In the event that City elects to extend the term of the Management Agreement, then City will be deemed to have also elected to extend the term of this Agreement. In the event of such election, City shall notify Team San Jose in writing of its intention to exercise its option for an Additional Term no less than 180 days prior to the end of the then current term. Upon receipt of such notice, Team San Jose shall have 30 days to elect, by delivering written notice to City, to accept the option to extend, in which case the term of this Agreement will be extended for such Additional Term, or to elect to terminate the Agreement effective at the end of the then current term, in which case this Agreement will terminate at the end of the then current term notwithstanding City’s election to extend. In the event that Team San Jose fails to deliver written notice of its election, Team San Jose will be deemed to have accepted the City’s offer to renew this Agreement for an Additional Term. Any election to extend or to not extend the term of the Management Agreement will be deemed to be the same election under this Agreement. The City’s option to extend the term of this Agreement shall terminate in the event of the termination of this Agreement prior to the expiration of the Initial Term or any Additional Term or any termination of the Management Agreement for any reason.
- 1.3. AGGREGATE TERM; FISCAL YEAR. The aggregate term of this Agreement includes the Initial Term and any Additional Term (the “Term”). Unless otherwise indicated, obligations and performance measures will be determined based on a fiscal year commencing each July 1 and ending each June 30 (“Fiscal Year”) during the Term.

Section 2. SCOPE OF SERVICES

- 2.1. CVB SERVICES. During the Term of this Agreement, Team San Jose agrees to provide the following services to City (the “CVB Services”):
- (a) Develop a comprehensive marketing program to advertise, promote and publicize City to achieve, as City’s first priority, the goal of booking conventions, trade shows, conferences, and other events at the Facilities and area hotels in a manner that results in an economic impact for the City.
 - (b) Develop a marketing program directed to decision-makers and individual travelers to promote additional business and leisure travel to the City. Team San Jose may partner with other agencies, such as, but not limited to, San Jose International Airport, San Jose Sports Authority, San Jose Arts Commission, San Jose Downtown Association,

San Jose/Silicon Valley Chamber of Commerce, City of San Jose and Office of Economic Development, San Jose Hotels, Inc., and other local hotels and attractions as Team San Jose may reasonably determine to further extend its marketing efforts and reduce its dependency on City resources.

- (c) Subject to available funding, participate in activities related to the branding of the City of San Jose for the purpose of local, national, and international identity, and coordinate such activities with the City's Office of Economic Development and/or other City agencies as identified by the City Manager's Office or designated representative(s).

- 2.2. **EXCLUSIVITY.** City agrees that, during the Term, Team San Jose shall be the exclusive provider of the CVB Services.

Section 3. MARKETING PLAN

- 3.1. **DEVELOPMENT OF MARKETING PLAN.** Each Fiscal Year during the Term, Team San Jose will create and adopt, in cooperation with City, a marketing plan containing the information described in Section 4 below (the "Marketing Plan"), and generally in the format of Exhibit A attached hereto. The Marketing Plan will be based on the Approved Budget (as defined below) and will include, but not be limited to, performance criteria and goals for use of the Facilities, delegate attendance, hotel night usage, and delegate spending estimates. The Marketing Plan shall also specifically identify what percentage of leads for the previous Fiscal Year were successfully converted from Tentative Groups into Definitive Groups (as defined below) (otherwise referred to as Team San Jose's "Conversion Rate"). For each Fiscal Year of this Agreement, Team San Jose shall have a goal of meeting the industry standard for similar size cities and demographics in its Conversion Rate, or as otherwise agreed to by the parties. Team San Jose shall take all reasonable and necessary action to achieve the goals set forth in the approved Marketing Plan and this Agreement

The Marketing Plan for the Fiscal Year 2009-2010 is set forth in Exhibit A attached hereto. In subsequent Fiscal Years, Exhibit A will be replaced with the Marketing Plan for the then current Fiscal Year.

For purposes of this Agreement, "Tentative Groups" means those groups which have expressed sufficient interest in booking Facilities to cause Team San Jose to reserve space for them, although a letter of intent or contract has not been signed, and "Definitive Groups" means those groups that have signed a contract committing to use of the Facilities during specific dates and for a specific purpose.

- 3.2. **REVISIONS TO MARKETING PLAN.** City or Team San Jose may, by written notice to the other, request modifications to the Marketing Plan then in effect. City and Team San Jose may amend Exhibit A from time to time in order to reflect any mutually agreed upon modifications to the Marketing Plan.

Section 4. MARKETING, PROMOTION, AND CONVENTION SERVICES. Subject to the provisions of Section 3 and Section 5, Team San Jose, in consultation with City, and in furtherance of the CVB Services under this Agreement, shall perform the following marketing and

promotion activities and convention services during the Term of this Agreement:

- 4.1. SALES AND SERVICES IN GENERAL. Team San Jose shall pursue convention, meeting, and trade show business for the Facilities through sales and marketing activities, with an emphasis on booking the San Jose McEnery Convention Center (the “Convention Center”). Team San Jose shall offer promotional brochures, delegate housing, and other appropriate assistance to Definite Groups, and to those associations, groups and trade shows that have contracted with hotels and/or motels in City to hold room blocks therein in connection with events to be held at venues within the City other than the Facilities.
- 4.2. CONVENTION MARKETING AND SALES SUPPORT SERVICES. Team San Jose shall provide the following sales and marketing services for the Facilities:
- (a) Develop and maintain an annual strategic sales and marketing plan with the goal of promoting the City’s key assets to attract large national and/or regional conventions, trade shows and consumer shows, and as venues to attract sporting events, concerts, performing arts events, community events, large banquets and social events that will attract large audiences and patrons, and that bring visitors who will benefit the City’s business community, including increased occupancy of local hotel rooms and direct visitor spending at restaurants and retail establishments, and thereby stimulate sales tax, occupancy tax, and other revenue to the City. The annual strategic sales and marketing plan should contain, but not be limited to, the elements set forth on Schedule 4.2(a) attached hereto.
 - (b) Conduct market and customer satisfaction research.
 - (c) Provide advertising and promotional support services for the Facilities as appropriate.
 - (d) Create convention, trade show, theater and concert promotional materials, floor plans, maps and other materials used to market the Facilities and the City as a destination.
 - (e) Provide incidental services required in connection with convention or trade show events, including audience development and promotional activities.
 - (f) Provide all sales and sales support services for the Facilities, including onsite information and directions, the development and distribution of visitor guides to local attractions, destination marketing and serving as a resource for the referral of groups/events to the appropriate resource/hotel.
 - (g) Provide each of the following:
 - a. Sales direction, administration, staffing and management.
 - b. Sales and marketing personnel management.
 - c. Web development and maintenance.
 - d. Internal and external communications.

- e. Sales strategy/deployment model/personnel plan.
 - f. Sales process and procedure definitions/guidelines.
 - g. Sales accountabilities.
- 4.3. CITY WIDE ACTIVITIES. Subject to available funding, and as appropriate to achieving the principal objectives of Team San Jose in relation to the CVB Services, Team San Jose shall confer with the City's Office of Economic Development in the strategies related to the branding of the City and in efforts related to the City's marketing and promotional efforts and activities, including, as appropriate, with respect to the following:
- (a) Film and Video. Team San Jose shall support inquires from film production companies through sales and marketing activities.
 - (b) Tour and Travel. Team San Jose shall exercise its best efforts to (i) attract individual and group leisure travelers to City through sales and marketing activities, (ii) influence individual business travelers to use San Jose International Airport and City hotels or motels over similar facilities in other nearby communities, and (iii) provide visitor information and services.
 - (c) Public Affairs and Administration. Team San Jose shall provide strategic support services for its marketing programs, including personnel, finance and office operations.

Section 5. MEASURING PERFORMANCE

- 5.1. PERFORMANCE MEASURES. The Approved Budget, as adopted from year to year during the Term in accordance with the procedures set forth in Section 7, shall define the specific measurements for each of the Performance Measures described in this Agreement, and shall establish the sole criteria under this Agreement by which satisfaction of the Performance Measures under this Agreement will be determined for each Fiscal Year. The Performance Measures and the weighted percentages assigned to each category of Performance Measure ("Weighted Percentage") under this Agreement are set forth in Exhibit B attached hereto. Exhibit B, and the Performance Measures and Weighted Percentages set forth therein, may be modified from time to time subject to the mutual agreement of the parties. Team San Jose shall propose the specific Weighted Percentage measurements for the Performance Measures described in this Agreement in the same manner, and subject to the same timing, as described in the "Agreement for the Management of the San Jose Convention Center and Cultural Affairs Between the City of San Jose and Team San Jose, Inc." (the "Management Agreement") at Section 4.8 thereof; provided, however, such proposal shall be based solely on the Performance Measures and Weighted Percentages that are the subject of the CVB Services, as specifically described in Exhibit B to this Agreement.
- 5.2. SPECIAL REPORTING METRICS. Recognizing the importance of Team San Jose's CVB Services in branding both the City and the Facilities, Team San Jose shall provide City with reports on the activity described in this 5.2 (the "Special Reporting Metrics"); provided, however, the subject reporting shall be used for general oversight purposes only, and the

results derived therefrom will not be part of the Performance Measures. An annual accounting of impressions created by Team San Jose will be documented. The report will include a report of advertising types that are most effective in generating business for the Convention Center. The impressions will include data regarding the following areas: media impression (inclusive of print, radio and television), web site traffic, and convention sales and tradeshow activities. In addition, marketing/branding indicators will be developed to gauge the effectiveness of the following for the first year of the Term of this Agreement: (i) media placements – circulation; (ii) media placements – equivalent advertising value; (iii) media placements – number of placements; (iv) publications by travel writers (v) website – unique visitors, page views; (vi) number of business reply responses to printed advertising; and (vii) click-throughs and impressions of online advertising placements. These will be reviewed annually by mutual agreement. Sources will be determined annually through the budget process.

Section 6. LIMITATIONS ON OPERATIONS

6.1. **SPECIFIC LIMITATIONS.** In performing the CVB Services, Team San Jose shall not do the following with funds provided by City:

- (a) Use City funds in a manner inconsistent with the Marketing Plan or the Approved Budget.
- (b) Advertise, promote or publicize events, activities, facilities or establishments located outside of City, unless such advertising, promotion or publicity is directly related to and designed to carry out the goals and objectives set forth in Section 2.
- (c) Advertise, publicize or promote hotel and motel facilities outside City for any specific convention, trade show, conference or other event unless a meeting planner using the Facilities determines that there are insufficient hotel and motel facilities within City to accommodate the required aggregate room block for such event.

6.2. **SUGGESTED PERFORMANCE STANDARDS.** In addition to the specific limitations set forth in 6.1, it is agreed that, to the extent practicable and appropriate, Team San Jose will:

- (a) Use or book facilities within the City when conducting any Board retreats, staff trainings, or its operations as required by this Agreement.
- (b) Utilize local vendors, or service providers, recognizing the City's preference for local vendors.

Section 7. TEAM SAN JOSE BUDGET AND PAYMENT BY CITY

7.1. **SEPARATE ACCOUNTS FOR CONVENTION AND VISITORS BUREAU SERVICES.** Team San Jose will establish separate and distinct deposit accounts ("CVB Deposit Accounts") with selected financial institutions for the deposit of all funds received by Team San Jose from City with respect to the performance of the CVB Services. All reimbursements of CVB Cost Advances (as defined below) will be paid from the CVB Deposit Accounts. Team San Jose will also provide separate accounting services for the

funding of the CVB Services provided for under this Agreement. Team San Jose will insure that there is no commingling of funds provided by the City for the CVB Services with the funds the City for other Team San Jose related activities. Team San Jose, through the development of the proposed Marketing Plan and Approved Budget, shall identify the service efforts related to the TOT Funds and General Fund funding sources that combine to support the CVB Services. Team San Jose may, in its sole discretion, transfer amounts within the Approved Budget for CVB Services from one category (i.e. Personnel, Non-Personnel or Marketing) to another during a Fiscal Year so long as: (i) the aggregate amount of the Approved Budget for CVB Services is not changed; and (ii) the performance targets outlined in the Marketing Plan and Approved Budget for the Fiscal Year are not altered and can still be met.

- 7.2. CITY BUDGET PROCESS. The City shall review and consider Team San Jose's budget proposal for the CVB Services during City's annual budget cycle. Representatives of City and Team San Jose may meet and confer as needed in order to better understand Team San Jose's budget proposal for the succeeding Fiscal Year. In accordance with the San José City Charter and all applicable laws, the City Council shall determine, prior to the end of each Fiscal Year during the Term of this Agreement, the amounts to be allocated and appropriated for CVB Services under this Agreement in the succeeding Fiscal Year and issue an Approved Budget pursuant to the process described in Section 7.6 (the "Approved Budget"). Attached hereto as Exhibit C is a copy of the Approved Budget for the period July 1, 2011 through June 30, 2012 (the "2011 Approved Budget"), which, subject to payments made through December 30, 2011, constitutes the Approved Budget for the period of this Agreement commencing January 1, 2012 and ending June 30, 2012.

Team San Jose shall participate in the City's budget and performance reporting process with respect to its activities under this Agreement by developing information as reasonably requested for the Business Plan, Investment Strategy, and Performance Measures, as these terms are defined in Glossary of Terms found in the City of San José Operating Budget. Team San Jose shall make Team San Jose staff available at reasonable times and for reasonable periods in order to assist in any budget presentations required by the City. Without limiting the generality of the foregoing, Team San Jose staff will, as requested, meet with City Department staff, including, without limitation, the Office of Economic Development and the Communications Working Group, in furtherance of assisting the City with the budget and reporting processes.

- 7.3. CVB COST ADVANCES. City shall reimburse Team San Jose for all expenses incurred in connection with performance of the CVB Services under this Agreement (the "CVB Cost Advances"), subject to the limitations of the Approved Budget; provided, however, that, as a condition to reimbursement of the CVB Cost Advances, Team San Jose must submit to the City Manager, or his or her designee, an itemized statement of Team San Jose's reimbursable expenditures for the previous month. The itemized statement of CVB Cost Advances shall be in a format reasonably approved by City, and may include electronic submission. Reimbursement of CVB Cost Advances shall be made within 15 days after submission. No payment shall be requested by Team San Jose, or paid by City, for Team San Jose overhead except as provided in this Section 7.

- 7.4. **ADVANCE PAYMENT.** On or before July 30 of each Fiscal Year, and subject to an appropriation therefor, City shall pay over to Team San Jose an advance of \$500,000.00 (the “Advance”) against the total CVB Cost Advances expected to become due to Team San Jose for the current Fiscal Year in accordance with 7.3. The Advance will be held in a separate and distinct CVB Deposit Account maintained by Team San Jose, and the funds held therein will not be commingled with any other funds available to or used by Team San Jose. The Advance shall be utilized by Team San Jose for paying its initial budget costs for such Fiscal Year. Team San Jose shall seek reimbursement from City for amount withdrawn from the Advance as provided for in 7.3 of this Agreement, and thus replenish said Advance until such time during the subject Fiscal Year that Team San Jose has billed City and been reimbursed for an amount equal to the difference between (1) the aggregate amount set forth in the Approved Budget for the CVB Services minus (2) the Advance. Thereafter, Team San Jose shall utilize said Advance for payment of its costs and expenses in accordance with this Agreement for the remainder of such Fiscal Year.
- 7.5. **INTERIM PAYMENTS.** Team San Jose and City acknowledge that, as of the date of this Agreement, City has paid over to Team San Jose the Advance for the Fiscal Year ending June 30, 2012, and that City has further made reimbursement of CVB Cost Advances in accordance with Section 7.3. Attached hereto as Schedule 7.5 is a detail of expenditures made through the date of this Agreement on account of the 2011 Approved Budget, all of which shall be credited toward City’s obligations with respect to the 2011 Approved Budget and to Team San Jose’s performance thereunder for purposes of this Agreement.
- 7.6. **BUDGET DEVELOPMENT.**
- (a) Team San Jose’s budget for the CVB Services will be developed and approved concurrent with City’s budget cycle. City agrees to make all serious and reasonable efforts to provide Team San Jose, on or before February 1 of each Fiscal Year during the Term of this Agreement, with an estimate of projected Transient Occupancy Tax Revenues and an estimate of projected General Fund Revenues that City anticipates will be allocated to Team San Jose’s activities by City in the succeeding Fiscal Year (collectively “Revenue Forecast”).
 - (b) On or before March 1 of each Fiscal Year, Team San Jose shall deliver to the City Manager’s Budget Office a proposed budget (“Proposed Budget”) in a form reasonably acceptable to the City, and at least as detailed as the form of Approved Budget set forth in Exhibit C, for the following Fiscal Year, which Proposed Budget will include:
 - a. Team San Jose’s revenue projections for CVB Services from the private sector for the following Fiscal Year;
 - b. Detailed expenditures for marketing, personnel, and non-personnel expenditures for each core service and strategic support service of Team San Jose for the following Fiscal Year;

- c. Comparisons by category of the proposed budget for the following Fiscal Year to the estimated expenses for the then Fiscal Year and to the actual expenses for the previous Fiscal Year;
- d. Performance Measures that include actual performance for the previous Fiscal Year, projected performance for the current Fiscal Year, and targets for the following Fiscal Year.

Team San Jose may also submit to City, at the time it submits its Proposed Budget, any supplements or augmentations that it recommends for additional opportunities to provide additional services to achieve the objectives under this Agreement. After final TOT estimates are provided to Team San Jose City and Team San Jose will work collaboratively to arrive at a final proposed budget; however City resources (Airport funding, General Fund, and TOT) allocated to Team San Jose for CVB Services shall be determined solely by the City Council.

- 7.7. APPROVED BUDGET; AMENDMENT TO EXHIBIT C. Subject to and upon the adoption by City of Team San Jose's Proposed Budget for the succeeding Fiscal Year, and subject to any modifications thereto arising during the budget process, the Proposed Budget will become the "Approved Budget" under this Agreement, and a copy of such Approved Budget will be labeled Exhibit C, signed by authorized representatives of City and Team San Jose, and will be filed with the City Clerk's Office by September 30th of that Fiscal Year. The City Manager or his or her designee is authorized to sign such revised Exhibit C on behalf of City. The revised Exhibit C, as signed by each party, will replace and supersede the Exhibit C attached hereto for the prior Fiscal Year, will be deemed the Approved Budget for purposes of this Agreement, and will be deemed a part of this Agreement.
- 7.8. ADDITIONAL FUNDING SOURCES. In addition to its obligations under this Agreement, Team San Jose is encouraged, but not obligated, to develop additional funding sources so long as such activities do not conflict with or impair Team San Jose's performance under this Agreement. Team San José will provide City with information regarding the additional funding sources including the purposes and how the funding relates to the Marketing Plan and Goals and Objectives as referenced in this Agreement..
- 7.9. REPAYMENT TO CITY. Unless otherwise approved by City, Team San Jose shall repay to City, on or before July 31 of each Fiscal Year, or the earlier termination of this Agreement, any and all moneys paid by City and held in a CVB Deposit Account, excluding funds set aside for reserves, during such Fiscal Year which, upon the expiration of such Fiscal Year or the earlier termination of this Agreement, are unexpended or which are not necessary for the payment of reimbursable expenditures of Team San Jose under this Agreement for such Fiscal Year. City agrees that funds allocated in the Approved Budget to Team San Jose for CVB Services and not expended by June 30 of a Fiscal Year may, with prior written approval of the City Manager or his or her designee, be carried forward and used by Team San Jose for the subsequent Fiscal Year in accordance with this Section 7. Also, any CVB Cost Advances not reimbursed in the prior Fiscal Year due to insufficient TOT Revenues may be carried forward and reimbursed to Team San Jose in a subsequent Fiscal Year; provided, however, no term of this Agreement requires Team San Jose to advance expenses with respect to CVB Services except to the extent that there is a corresponding obligation on the part of City to reimburse such advances. On or before May 15 of each Fiscal Year, Team San Jose shall

submit to the City Manager, or his or her designee, an outline of the program(s) with respective budget(s) for which Team San Jose wishes carried-over funds, if any, to be expended in the subsequent Fiscal Year. All such expenditures shall be otherwise in accordance with terms and conditions of this Agreement.

- 7.10. **AGREEMENT TO DISCUSS FUTURE FUNDING.** Team San Jose and City agree to meet and engage in discussions during the Term of this Agreement regarding long term Team San Jose funding needs and strategy to assist Team San Jose in attaining its goal of consistent base City funding from year to year to the extent reasonably feasible and consistent with applicable law. Said funding discussion shall include all sources of funding provided by City to Team San Jose and/or administered by Team San Jose or in which Team San Jose’s staff or Board of Director’s participates in the administration of for the purposes of marketing as described in Section 2.

Section 8. BUDGET LIMITATIONS – ALL FISCAL YEARS DURING TERM

- 8.1. **EQUIPMENT REIMBURSEMENTS.** During the Term of this Agreement, CVB Cost Advances may include reimbursement for items of equipment. City’s prior written approval of equipment purchases, which approval shall not be unreasonably withheld, shall only be required for the purchase of items of computer equipment hardware the cost of which is \$5,000.00 or more. Upon the purchase of any such computer equipment hardware and reimbursement therefor by City, the ownership of each such item of computer equipment hardware shall be deemed automatically transferred to City.
- 8.2. **TOT REVENUE PROJECTIONS.** All CVB Cost Advance reimbursement payments by City to Team San Jose are dependent upon receipt by City of sufficient transient occupancy tax revenues (“TOT Revenues”) to fund the Approved Budget. During the Term of this Agreement, it may be necessary for City to adjust the amount of monies available to fund the Approved Budget to reflect any deficiencies that may occur in TOT Revenues. Team San Jose agrees that the total amount of City’s reimbursements of CVB Cost Advances to Team San Jose may be reduced if the amount of TOT Revenues actually collected by City during the term of this Agreement are less than the amount of TOT Revenues anticipated at the commencement of each Fiscal Year; provided, however, Team San Jose is not obligated to expend any funds on behalf of or on account of the CVB Services in excess of the funding therefor actually provided by City.

In the event that, due to an actual or projected deficiency or shortfall in TOT Revenues in a Fiscal Year during the Term of this Agreement, there will be insufficient TOT Revenues to fund the Approved Budget, City shall, by written notice to Team San Jose, provide Team San Jose with revised information on the amount of TOT Revenues to be provided by City under this Agreement. Team San Jose may prepare a revised budget and modifications to its Marketing Plan for the City Council to act upon in light of the revised information; such revisions shall be reflected in a written modification to this Agreement and to the Approved Budget. City and Team San Jose may, by mutual agreement in a succeeding Fiscal Year, agree to increase in the amount of TOT Revenues in a subsequent Fiscal Year to account for any deficiencies in TOT Revenues in the then current Fiscal Year.

Section 9. COMMUNICATIONS BETWEEN CITY AND TEAM SAN JOSE

The City and Team San Jose shall make reasonable efforts to coordinate with other marketing and public relations programs funded by the City. The parties mutually agree that they will directly notify each other (either through an annual marketing plan or other appropriate manner) prior to the undertaking of any major promotional materials, public relations campaign or new program activity dealing with the promotion of San Jose. This mutual obligation is intended to coordinate efforts so all necessary parties are made aware of the activity of the other in order to avoid duplication of financial and staff resources. In addition, Team San Jose will work identify a staff person to serve as a member of the Communications Working Group (“CWG”) established by the City, and will work with the City’s Public Information Officer to assist in conducting research into the scope of the City funded marketing efforts as part of the efforts of the CWG.

Section 10. VISITOR INFORMATION CENTER — CONVENTION CENTER

Subject to and based on available funds, Team San Jose shall maintain a Visitor Information Center at the Convention Center. The number of persons staffing the Visitor Information Center will vary depending on projected building activity and shall be determined by Team San Jose in accordance with the Approved Budget.

Section 11. BOOKS AND RECORDS OF TEAM SAN JOSE

- 11.1. MAINTENANCE DURING TERM. Subject to the provisions of Section 11.5, Team San Jose shall maintain any and all contracts, ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to the services provided under this Agreement, or expenditures and disbursements charged to City under this Agreement (collectively “CVB Records”), for three years, or for such longer period required by law, from the date of final payment to Team San Jose pursuant to this Agreement.
- 11.2. MAINTENANCE AFTER TERM. Team San Jose shall turn over to City all CVB Records which demonstrate performance under this Agreement upon termination or completion of this Agreement.
- 11.3. INSPECTION. Subject to the provisions of Section 11.6, any CVB Records required to be maintained pursuant to Section 11.1 must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Team San Jose shall provide copies of such documents to City for inspection at City Hall when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, the records shall be available at Team San Jose’s address indicated for receipt of notices in this Agreement.
- 11.4. CUSTODY OF RECORDS. Where City has reason to believe that any of the CVB Records may be lost or discarded due to dissolution, disbandment, or termination of Team San Jose’s business, City may, by written request by any of the above-named officers, require that custody of the CVB Records be given to City, and that the subject CVB Records be maintained in City Hall or such other location to be determined by City. City agrees to grant access to the CVB Records to any party authorized by Team San Jose, Team San Jose’s representatives, or Team San Jose’s successor-in-interest.

11.5. SCOPE OF CVB RECORDS. The CVB Records shall be prepared by Team San Jose as a separate set of books and records relating solely to the CVB Services funding, expenditures and activities, and shall be maintained separate and apart from all other Team San Jose activities (including, without limitation, separate and apart from Team San Jose's management activities under the Management Agreement). No receipts, collections, or money of Team San Jose shall be credited to, or recorded in, such separate CVB Records other than as relate to the CVB Services. Team San Jose shall maintain all of the CVB *Records* in accordance with generally accepted accounting principles.

Section 12. REPORTS FROM TEAM SAN JOSE

12.1. MONTHLY REPORTS. On or before the 15th of each calendar month during the Term, Team San Jose shall deliver to City a monthly report covering the prior calendar month, in a form mutually agreed to by the parties, which reports will include, but are not limited to, the following information, as available:

- (a) Income and Expenditure Statements in a format to be mutually agreed upon, containing detailed information of the monthly income and expenses associated with Team San Jose's CVB Services, including a comparison of actual to budget, and a comparison of current year actuals to prior year actuals.
- (b) Variance Reports in a format to be mutually agreed upon, containing detailed variance information of the monthly income and expenses.
- (c) Balance Sheet with respect to the CVB Account and CVB Services.
- (d) Estimated delegate expenditures for all Definite Groups scheduled by Team San Jose to hold events at the Facilities after the end of the previous month, and detailed space requirements (as available), including gross square foot exhibit space, net space and number of booths, meeting space needs (number, types and capacities), and estimated attendance for all incoming Definite Groups and Tentative Groups; provided, however, if the Definite Group has requested confidentiality, the name or source of the group will be redacted or identified with an alpha or numeric code maintained solely by Team San Jose.
- (e) A list of all Definite Groups which held events at the Facilities during the previous month, which list states for each group: (a) the name of such group's event, and (b) the date(s) on which such event took place; provided, however, if the Definite Group has requested confidentiality, the name or source of the group will be redacted or identified with an alpha or numeric code maintained solely by Team San Jose.
- (f) Once information is available, the actual hotel and motel room nights related to the event (peak and total room nights), and the estimated economic impact of such event.

12.2. ANNUAL REPORT. No later than October 31 of each year during the Term, Team San Jose shall submit to City a formal report, in a form mutually acceptable to the City and Team San Jose, (1) detailing all accomplishments related to marketing goals and objectives of Team San Jose in furtherance of this Agreement during the previous Fiscal year, (2) describing

performance criteria and goals referred to in Section 5 and Exhibit B which were met during such year.

- 12.3. **OFFICERS LIST; ORGANIZATIONAL CHART.** Not later than September 1 of each Fiscal Year, Team San Jose shall deliver to City, in an electronic format reasonably acceptable to City, (a) a list of Team San Jose’s then-current officers, together with the amount of total compensation to be paid to those officers in salary, benefits and other compensation, and administrative staff dedicated to providing the CVB Services under this Agreement, and (b) a copy of the Team San Jose’s then-current organizational chart reflecting lines of authority within Team San Jose. For purposes of this Section 12.3, the term “officers” means and is limited to the Chief Executive Officer, President, Vice President of Sales, Secretary, Chief Financial Officer, Director of Human Resources, Director of Public Affairs, and Director of Operations.
- 12.4. **FINANCIAL STATEMENT.** Not later than 120 days after the end of each Fiscal Year during the Term, Team San Jose shall deliver to City, in a manner reasonably acceptable to the City, a copy of Team San Jose’s audited financial statement as of the end of that Fiscal Year containing a balance sheet and a statement of income and expenditures relating solely to Team San Jose’s CVB Services.
- 12.5. **PROPERTY LIST.** Not later than October 31 of each year of the Term, Team San Jose shall deliver to City, without charge, a list of all property owned by City and in the possession of Team San Jose as of June 30 of that year. The subject list shall include, for each item of property, the date of purchase, the inventory tag number, and the original cost of such item of property, and shall be otherwise in form and substance reasonably satisfactory to the City.
- 12.6. **DUTY TO KEEP CITY INFORMED.** To the extent not otherwise disclosed in the reports to be provided under paragraphs A through D, inclusive, above, Team San Jose shall keep City informed and advised of all material financial and other matters concerning the performance of the CVB Services under this Agreement, and shall give due consideration to suggestions which City, or its agents and consultants, may offer with respect thereto from time to time.

Section 13. ANNUAL PERFORMANCE AUDIT

- 13.1. Within 120 days after the end of each Fiscal Year, the City (through its Director of Finance or other authorized officer) shall commence a performance audit of the CVB Services by (a) the City’s Internal Auditor, (b) a consultant or independent auditor with subject matter expertise in convention/visitor bureau operations, or (c) the same independent certified public accounting firm contracted to perform City’s City-wide audit (“Auditors”). The performance audit shall assess Team San Jose’s performance of the CVB Services during the Fiscal Year just ending, and shall propose the achieved Weighted Percentages with respect to each of the Performance Measures and the resulting Weighted Achievement Percentage for the subject Fiscal Year. A draft of the performance audit report shall be delivered to City and Team San Jose within 150 days after the end of each Fiscal Year.
- 13.2. Team San Jose shall have 30 days after receipt of the draft audit report to accept or object to the results and findings thereof by delivering written notice to the External Auditor; provided, however, Team San Jose shall not unreasonably withhold approval. If Team San Jose fails to

serve written objection to the draft performance audit report within 30 days, Team San Jose is deemed to have accepted the report. If Team San Jose objects to the findings in the draft performance report, City, Team San Jose, and the External Auditors shall mutually agree to a procedure for resolving the objection.

- 13.3. Upon approval of the results of the draft performance audit report by City and Team San Jose, a final performance audit report (the "Performance Audit Report") shall be issued by the Auditors.
- 13.4. In addition, at the direction of the City's Director of Finance or other authorized officer, the performance audit may include, without limitation, a review and evaluation of Team San Jose's internal controls, operating procedures and practices, and financial analysis. The performance audit shall be completed and the Performance Audit Report furnished to City and Team San Jose within 60 days after delivery of the draft performance audit pursuant to Section 13.1. The fees and costs incurred for the performance audit services and the issuance of the Performance Audit Report will be paid by City.

Section 14. ANNUAL AUDITED FINANCIAL STATEMENT AND SUBMITTAL OF FORM 990

At the end of each Operating Year, an audit of the books and records of the Team San Jose shall be performed by the City's independent certified public accounting firm contracted to perform City's City-wide audit ("External Auditors"), such audit to be completed and a report to be furnished within 120 days after the end of such Operating Year (or such period as reasonably requested by City's Director of Finance or City Manager's Office). The audited financial statements shall include a Balance Sheet, Income Statement, Statement of Changes in Financial Position, and a Statement of Total Revenues (if not shown on the income statement) prepared in accordance with GAAP and governmental accounting standards accompanied by an opinion with regard thereto, if obtainable, of the External Auditors. Costs for such audit services will be paid by Team San Jose and considered an authorized operating expense under this Agreement; provided, however, such expense shall not be considered in assessing Performance Goals or Weighted Percentages.

In addition to the Annual Audited Financial Statement submittal, Team San Jose shall provide the City with a copy of their Internal Revenue Service (IRS) Form 990 upon filing with the IRS. Copies of IRS Form 990 shall be submitted to the City in a form as requested and deemed acceptable by the City in addition to an electronic copy.

Section 15. INDEMNIFICATION

Team San Jose shall defend, indemnify and hold harmless City, its officers, agents, and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury to persons, property or any interest, tangible or intangible, sustained by or occurring to any person or persons, howsoever the same may be caused, directly or indirectly, from the performance of Team San Jose under this Agreement or the failure of Team San Jose to perform under this Agreement, except as may arise from the negligence or willful act of City, its officers, agents, and employees.

To the extent permitted by applicable law, City shall defend, indemnify and hold harmless Team San Jose, its officers, agents and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury to persons, property or any interest, tangible or intangible, sustained by or occurring to any person or persons, howsoever the same may be caused, directly or indirectly, from the performance of City under this Agreement or failure of City to perform under this Agreement, except as may arise from the negligence or willful act of Team San Jose, its officers, agents and employees.

Section 16. INSURANCE REQUIREMENTS

Team San Jose shall maintain insurance in accordance with the requirements set forth in Exhibit D.

Section 17. TERMINATION OF AGREEMENT

- 17.1. **TERMINATION FOR CONVENIENCE.** City agrees that this Agreement shall not be terminated for convenience prior to July 1, 2012. From and after July 1, 2012, except as otherwise provided in this Agreement, City may, upon 180 days written notice, beginning on the second day after mailing, terminate this Agreement in whole or in part. If this Agreement is terminated pursuant to this 17.1, City shall be liable only for payments required to be made under the terms of this Agreement for services rendered and goods delivered prior to the effective date of termination.
- 17.2. **TERMINATION FOR DEFAULT.** In the event that City reasonably determines that Team San Jose has failed to comply with the material terms of this Agreement in a timely manner (“Default”), City shall notify Team San Jose in writing of the nature of the Default and of the corrective action to be taken. If corrective action is not commenced within five business days after receipt of written notice, and completed within a reasonable time thereafter, then, subject to the terms of 17.4, City may terminate this Agreement by written notice to Team San Jose (“Notice of Termination”), which termination shall take effect 90 days after delivery of the Notice of Termination. City further reserves the right to prohibit Team San Jose from incurring additional obligations during the investigation of any alleged Default and pending corrective action by Team San Jose or a decision by City to terminate the Agreement.
- 17.3. **TERMINATION FOR FAILURE TO MEET PERFORMANCE MEASUREMENTS.** In the event that the Performance Audit Report described in 13.3 indicates that Team San Jose has failed to achieve a Weighted Percentage of at least 80% as to at least one of the Performance Measures for a Fiscal Year, then City Council may, within 60 days after delivery of the Performance Audit Report for the Fiscal Year which is the subject of the report, terminate this Agreement 180 days after delivery of a written Notice of Termination to Team San Jose.
- 17.4. **APPEAL PROCESS.** In the event that City elects to terminate this Agreement based on City’s assessment of its right to do so under 17.2, Team San Jose may appeal the City’s decision by submitting the matter to the City Council. The decision of the City Council will be final and binding on the parties. During the period of appeal, the time period following a Notice of Termination as set forth in 17.2 will be suspended.

- 17.5. CONSEQUENCES OF TERMINATION. In the event of termination of this Agreement, Team San Jose shall deliver to City copies of all reports, documents, and other work performed by Team San Jose under this Agreement and, upon receipt thereof, City shall pay Team San Jose for services performed and reimbursable expenses incurred pursuant to the provisions of this Agreement to the date of termination.
- 17.6. TERMINATION PROCEDURES. Upon termination of this Agreement, City, in addition to any other rights provided in this Agreement, may require Team San Jose to deliver to City any property specifically produced or acquired for the performance of this Agreement. After receipt of a Notice of Termination, Team San Jose shall:
- (a) Consult with and follow the direction of the City Manager to determine when and the manner by which to stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
 - (b) Place only those orders or subcontracts for materials, services, or Facilities as may be necessary to maintain the interests of the City;
 - (c) Assign to City, in the manner, at the times, and to the extent directed by the City Manager, all of the rights, title and interests of Team San Jose under this Agreement;
 - (d) Settle all outstanding liabilities and claims (other than ongoing contract obligations), with the approval or ratification of City to the extent City may require, which approval or ratification shall be final for all the purposes of this clause;
 - (e) Transfer to City, and deliver in the manner, at the times, and to the extent directed by City, title to any property which, if the Agreement had been completed, would have been required to be furnished to City; and
 - (f) Take such action as may be necessary, or as City may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Team San Jose and in which City has or may acquire an interest.

Section 18. WAIVER OF BREACH

The waiver by either party of any breach of any term, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Team San Jose requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Team San Jose.

Section 19. EQUAL OPPORTUNITY AND NONDISCRIMINATION

Team San Jose shall not exclude any person from employment at Team San Jose on any grounds prohibited by state or federal law. Furthermore, Team San Jose agrees that no person shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination in the performance of his or her employment activities at Team San Jose on any grounds prohibited by state or federal law.

Section 20. APPROPRIATION OF CITY FUNDS; REQUIRED FUNDING

20.1. APPROPRIATION OF FUNDS. This Agreement is subject to the fiscal provisions of Article XII of the Charter of City. This Agreement will terminate without penalty (a) at the end of any Fiscal Year in the event that TOT Revenues are not available and funds are not appropriated for the following Fiscal Year, or (b) at any time within a Fiscal Year in the event that funds are only appropriated for a portion of the Fiscal Year and TOT Revenue funds for this Agreement are no longer available.

20.2. CONTROLLING PROVISION. This Section 20 shall control in the event of a conflict with any other provision of this Agreement.

Section 21. PURCHASE OF SUPPLIES

In connection with the purchase by Team San Jose of equipment, materials, goods, supplies and inventories, Team San Jose shall endeavor to make all such purchases at the best price available to Team San Jose, considering the quantities required, the quality desired, the time available for delivery, and the sources of supply whenever possible as part of a volume purchase by Team San Jose. Team San Jose shall also exercise its best efforts to comply with City's Environmentally Preferable Procurement Policy (Council Policy 4-6). A description of environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. City will provide Team San Jose with not less than 15 days written notice prior to the effectiveness of any change to the Environmentally Preferable Procurement Policy.

Section 22. SUBSIDY GUIDELINES

Team San Jose agrees that any subsidies of any fees for use of the Facilities granted by the Team San Jose shall be made in compliance with City Council Policy 1.1.

Section 23. AMERICANS WITH DISABILITIES ACT

Unless caused by alterations or changes made by Team San Jose's or caused by Team San Jose's negligence or willful misconduct, City agrees that City shall be responsible under Title II of the Americans with Disabilities Act ("ADA") for the following items: (i) structural fixtures, including the Facilities' elevators and (ii) any doorway of the Facilities or any common area of the Facilities open to the general public.

Team San Jose shall be responsible for complying with the ADA in connection with (i) setting up and running the Visitor Information Center including, without limitation, removing physical barriers created by Team San Jose, (ii) providing auxiliary aids and services where necessary to ensure effective communication to individuals with disabilities who participate or desire to participate in Team San Jose's programs, and (iii) modifying Team San Jose's policies, practices and procedure, as necessary, to enable individuals with disabilities to participate equally in the programs of Team San Jose. City shall make reasonable efforts to advise Team San Jose of any applicable changes or new requirements of the ADA. Notwithstanding, City's advice or approval of any aspect of Team San Jose's activities under this Agreement shall not be construed in any way as a representation that such item or activity complies with the ADA.

Section 24. STATEMENTS, RECORDS AND INFORMATION

Team San Jose represents and warrants to City that all statements, records, reports, certifications and other information submitted by Team San Jose to City have been true and accurate in all material respects, and covenants that all future statements, records, reports, certifications and other information submitted by Team San Jose to City will be true and accurate in all material respects.

Section 25. COMPLIANCE WITH LAWS

Team San Jose shall, at its sole cost and expense, promptly and faithfully observe and comply with all requirements of all laws, statutes, ordinances, rules, regulations, orders and requirements of all governmental authorities (including, but not limited to, municipal, county, state and federal governments and their departments, Team San Jose’s, boards, commissions and officials) now in force or which may hereafter be in force.

Section 26. GIFTS.

Team San Jose acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08. Team San Jose agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08. Team San Jose’s offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 17 of this Agreement.

Section 27. CONFLICT OF INTEREST

Team San Jose shall avoid all conflicts of interest or the appearance of conflict of interest in the performance of this Agreement.

Section 28. NOTICES AND COMMUNICATIONS

Unless otherwise specified in this Agreement, all notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder to be given by either party to the other or the City Manager, shall be in writing and shall be sufficiently given and served upon the recipient if sent by U. S. mail, first-class mail, postage prepaid and addressed as follows:

If to the City Manager, the same shall be addressed to:

City Manager’s Office
City of San Jose
200 East Santa Clara Street, Floor 17
San Jose, CA 95113

If to Team San Jose, at the address set forth below:

Team San Jose, Inc.
San Jose McEnery Convention Center
408 Almaden Blvd.
San Jose, CA 95110-2715
Attn: President

With a copy to:

Hopkins & Carley
70 S. First Street
San Jose, CA 95113
Attn: Lloyd A. Schmidt

or to such other place as the City Manager, or Team San Jose, respectively, may notify a party in writing.

Section 29. RETURN OF PROPERTY

Upon the expiration or earlier termination of this Agreement, Team San Jose shall promptly return to City all property of City in the possession of Team San Jose or utilized by Team San Jose (including City property acquired in accordance with prior agreements between City and Team San Jose), including, without limitation, all equipment referred to in 8.1. All such property shall be in at least as good as condition as when acquired by Team San Jose, except for ordinary wear and tear.

Section 30. MISCELLANEOUS

- 30.1. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.
- 30.2. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto.
- 30.3. Time is and shall be of the essence of each term and provision of this Agreement.
- 30.4. This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State of California.
- 30.5. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- 30.6. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided

the invalidity of any such covenant, condition or provision does not materially prejudice either City or Team San Jose in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

- 30.7. All exhibits, schedules, and addenda referred to herein, and any exhibits, schedules, and/or addenda which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth in fully herein.
- 30.8. Days, unless otherwise specified, shall be calendar days.
- 30.9. It is understood and agreed that Team San Jose, in the performance of the services agreed to be performed by Team San Jose, shall act as and be an independent contractor and not an agent or employee of City. Furthermore, it is understood that Team San Jose is subject to, and must act in accordance with, its articles, bylaws and the provisions of the California Corporation Code applicable to domestic nonprofit corporations.
- 30.10. Whenever in this Agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, shall not be unreasonably withheld or delayed, and shall be executed by a person having the express authority to grant such approval or consent.
- 30.11. The review, approval, inspection, examination or consent of City or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use. No third parties, including persons claiming under Team San Jose, shall have any rights hereunder.
- 30.12. The rights and obligations of Team San Jose under this Agreement are personal to Team San Jose and may not be transferred, assigned or subcontracted, in whole or in part, without the prior written consent of City.

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Section 31. EFFECTIVENESS SUBJECT TO APPROPRIATIONS

The parties agree and acknowledge that pursuant to San José Municipal Code Section 4.04.020, it is a prerequisite to the effectiveness of this Agreement that moneys be appropriated in an amount sufficient to fund the obligations of City under this Agreement. City and Team San Jose further agree that, in the event that the City Council does not appropriate the funding for this Agreement, it shall become null and void.

IN WITNESS WHEREOF, City and Team San Jose have executed this Agreement on the day and year first above written.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

BRIAN DOYLE
Senior Deputy City Attorney

TEAM SAN JOSE, a California nonprofit corporation

By: _____
WILLIAM SHERRY
President and Chief Executive Officer

SCHEDULE 4.2(a)

CVB Services- Marketing Plan Section Template

Objectives

Meeting Planner & Event Target Customers and Profile

San Jose SWOT

Market Research and Trends

Sales Goals

Target Markets

Measurement

Marketing Strategies

Marketing Tactics

Theater Marketing

EXHIBIT A

MARKETING PLAN

Public Relations and Communications Plan Template

Overview

Objectives

Tactics and initiatives to Deliver Results for Destination and Facility Awareness

Measurement

Target Media and Profiles

Messaging

EXHIBIT B

PERFORMANCE MEASURES FOR CVB SERVICES

The Approved Budget, as adopted from year to year during each Fiscal Year of the Term in accordance with the procedures set forth in Section 7.6 and Section 7.7, shall define the specific measurements for the Performance Measures described below, shall establish the sole criteria under this Agreement by which satisfaction of Performance Measures will be determined for each Fiscal Year of the Term, and shall assign a weighted percentage to Performance Measures (“Weighted Percentage”) for purposes of determining performance under this Agreement. The categories of performance goals by which Team San Jose’s performance shall be measured (based on criteria established in the Approved Budget from year to year) (“Performance Measures”), and the Weighted Percentage assigned to each category, shall consist of the items and percentages listed below. The categories, components, and Weighted Percentages assigned to the Performance Measures may be changed or modified from year to year as mutually agreed by City and Team San Jose. In accordance with Section 13, Annual Performance Audit, a weighted percentage will be calculated as the product of the extent to which Team San Jose met or exceeded the Performance Measure criteria for the subject Fiscal Year multiplied by the Weighted Percentage assigned to such Performance Measure (the “Weighted Achievement Percentage”). The Weighted Percentage for each Performance Measure criteria set forth in the Approved Budget shall be multiplied by a percentage that reflects the extent to which the results of Team San Jose’s performance met the established base line. By way of example, and not by way of limitation, if a Performance Measure is assigned a Weighted Percentage of 40%, and it is determined that Team San Jose met 110% of the performance criteria for such Performance Measure, then Team San Jose would have a Weighted Achievement Percentage of 44% with respect to such Performance Measure (40% x 110% = 44%).

By marketing the City to a strategic mix of business and visitor types, for purposes of the CVB Services, Team San Jose will focus on generating TOT Revenues, total attendance for events, and direct spending associated with the Facilities. The Performance Measures and Weighted Percentages assigned to each are described as follows:

1. Hotel Room Nights. This category of Performance Measure is assigned a Weighted Percentage of 50%. Measured as (A) the total number of hotel room nights sold by the CVB over the course of the Fiscal Year and (B) the total number of hotel room nights sold that can be directly or indirectly attributed to activities at the Facilities.

2. Direct Visitor Spending. This category of Performance Measure is assigned a Weighted Percentage of 50%. The purpose of this Performance Measure is to determine direct visitor spending based industry standard multiplier models mutually agreed upon by Team San Jose and the City. The components of calculating this measure and the formula for applying the subject components to achieve a numerical result (the “Visitor Spending Matrix”) will be set forth on Schedule A-1 attached hereto, as amended from time to time during the Fiscal Year. Without limiting the generality of the foregoing, the components for calculating this measure shall include sales tax revenues arising from direct spending attributable to convention activity. Notwithstanding the foregoing, it is agreed that, for the first year of the Term, the matrix used by Destination Marketing Association International (“DMAI matrix”) will be used to calculate the Visitor Spending Matrix. In the event that Sports Economics matrix becomes available, City and Team San Jose may agree to substitute this for the DMAI matrix.

EXHIBIT C

APPROVED BUDGET

CVB Budget Template

Future year budgets will be filed with the Clerk's Office.

	<u>FY 2011 Actual</u>	<u>Budget 2012</u>	<u>Forecast FY2012</u>	<u>Budget 2013</u>
TOT Revenue	2,721,065	2,984,423	2,984,423	3,133,644
General Fund	1,075,452	554,369	554,369	-
Funded from Reserves		221,000	135,000	
Fund 536 Transfer	-	-	-	500,000
Added Marketing \$\$ from Fund 536				400,000
Operating Revenue	<u>267,109</u>	<u>329,157</u>	<u>194,535</u>	<u>294,597</u>
Total Revenue	4,063,626	4,088,949	3,868,327	4,328,241
Sales	1,500,096	1,690,804	1,735,722	1,635,994
Marketing	716,899	648,589	703,942	610,256
Public Relations	228,784	235,338	248,632	283,988
Visitor Services	37,281	29,313	54,368	55,000
Support Staff	<u>1,579,092</u>	<u>1,484,316</u>	<u>1,125,167</u>	<u>1,730,312</u>
Total Expenses	4,062,152	4,088,360	3,867,831	4,315,550
Net Income <Loss>	1,474	589	496	12,691

EXHIBIT D

INSURANCE REQUIREMENTS

TEAM SAN JOSE, at TEAM SAN JOSE'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by TEAM SAN JOSE, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including Liquor Liability, Fire Legal Liability; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobile; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Crime Coverage
5. Professional Liability Errors and Omissions insurance for all professional services.
6. Property Insurance against all risks of loss to any improvements or betterments, TEAM SAN JOSE's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by TEAM SAN JOSE on the premises.
7. Builders' Risk during build outs, remodels or tenant improvements and betterments

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

TEAM SAN JOSE shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage; \$5,000,000 Liquor Liability, \$1,000,000 Fire Legal Liability; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and

4. Crime Coverage: A Combination Crime policy with minimum limits not less than \$500,000 for

Form A: Employee Dishonesty

Form B: Forgery or Alteration

Form C: Theft, Disappearance, Destruction Inside/Outside Premises

Form D: Robbery and Safe Burglary Inside/Outside Premises

5. Professional Liability Errors and Omissions Insurance: \$1,000,000 each occurrence/aggregate.

6. Property Insurance: Full replacement cost with no coinsurance penalty provision.

7. Builders' Risk: During the period of the Team San Jose's build out, remodeling or any Team San Jose improvements and betterment, Team San Jose shall carry Builders Risk insurance under which the building containing the leased premises and work in process are insured against loss or damage are insured against loss or damage resulting from acts or omissions of Team San Jose, its agents and contractors in the course of such building or remodeling. Limit shall be the completed value for the project; no deductible shall exceed \$50,000

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY OF SAN JOSE's. At the option of CITY OF SAN JOSE, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY OF SAN JOSE, its officer, employees, agents and contractors; or TEAM SAN JOSE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY OF SAN JOSE.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage's

a. The CITY OF SAN JOSE, its officials, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, TEAM SAN JOSE; products and completed operations of TEAM SAN JOSE; premises owned, leased or used by TEAM SAN JOSE; and automobiles owned, leased, hired or borrowed by TEAM SAN JOSE. The coverage shall contain no special limitations on the scope of protection afforded to The CITY OF SAN JOSE, its officers, employees, agents and contractors.

b. TEAM SAN JOSE's insurance coverage shall be primary insurance as respects CITY OF SAN JOSE, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by CITY OF SAN JOSE, its officials, employees, agents or contractors shall be excess of TEAM SAN JOSE's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by TEAM SAN JOSE shall not affect coverage provided CITY OF SAN JOSE, the CITY, their officials, employees, agents, or contractors.

d. Coverage shall state that TEAM SAN JOSE'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.

e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. All Coverages. Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY OF SAN JOSE, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

TEAM SAN JOSE/Manager shall furnish CITY OF SAN JOSE with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

There are two (2) options for the delivery of insurance

- PDF via e-mail: Riskmgmt@sanjoseca.gov
- Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

G. **Sub-Contractors**

TEAM SAN JOSE shall include all sub-contractors as insured under its policies or shall obtain separate certificates and endorsements for each sub-contractor.

H. **Review of Coverage**

These insurance requirements shall be subject to review by City's Risk Manager. Should the risk manager require any change in coverage, any such change shall be noticed in writing by City to TEAM SAN JOSE and TEAM SAN JOSE shall comply with the change within thirty (30) days of the date of receipt of the notice.