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Consent Agenda Item

MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney
Lila I. McHenry, Senior Assistant County Attorney
Contact: (407) 836-7320

DATE: October 1, 2018

RE: **Consent Agenda Item for Board Meeting on October 16, 2018**
Approval of Eighth Addendum to 2007 Tourism Promotion Agreement
between Orange County, Florida and Orlando/Orange County
Convention & Visitors Bureau, Inc.
(Related to Ordinance Pertaining to Taxation Tourist Development Plan)

I. EXPLANATION & SUMMARY:

Since 1983, Orange County has promoted tourism in Central Florida through a contract with Visit Orlando. On September 18, 2018, the Board approved a one-year extension of the County's 2007 Visit Orlando Tourism Promotion Agreement (the "Agreement") which is funded through the County's Tourist Development Plan ("TDT Plan") and a portion of the Sixth Cent Tourist Development Tax (collectively, "TDT").

On September 21, 2018, the Tourist Development Council unanimously recommended that the County continue the \$5 million five-year additional advertising funding that was added to the TDT Plan in 2013 and add an additional \$5 million for the one-year term of the extension. This Eighth Addendum requires an amendment to the TDT Plan, and a public hearing on an amendment to the TDT Plan has been scheduled for the afternoon of October 16, 2018. This Eighth Addendum will be pulled from the consent agenda for consideration after the public hearing on the Plan amendment.

If you have any questions, please contact Lila McHenry or me at 407-836-7320.

II. ACTION REQUESTED:

Approval and execution of Eighth Addendum to 2007 Tourism Promotion Agreement between Orange County, Florida and Orlando/Orange County Convention & Visitors Bureau, Inc.

Attachment

c: Ajit Lalchandani, County Administrator
Eric Gassman, Deputy County Administrator
Fred Winterkamp, Manager, Fiscal and Business Services Division

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys

Elaine M. Asad
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William Turner

Legal Administrative Supervisor

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Paralegals
Melessia Lofgren
Maria Vargas, ACP
Gail Stanford

**EIGHTH ADDENDUM
TO
2007 TOURISM PROMOTION AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
ORLANDO/ORANGE COUNTY CONVENTION
& VISITORS BUREAU, INC.**

This **EIGHTH ADDENDUM TO 2007 TOURISM PROMOTION AGREEMENT** (this “Addendum”) amends and modifies that certain “Orange County, Florida and Orlando/Orange County Convention & Visitors Bureau, Inc. 2007 Tourism Promotion Agreement,” dated September 11, 2007, as amended on May 28, 2009, July 31, 2012, October 22, 2013, February 10, 2015, June 28, 2016, August 1, 2017 and September 18, 2018 (collectively, the “Agreement”) by and between **Orange County, Florida**, a charter county and political subdivision existing under the laws and Constitution of the State of Florida (the “County”) and the **Orlando/Orange County Convention & Visitors Bureau, Inc.**, a Florida not-for-profit corporation, currently doing business as **Visit Orlando** (“Visit Orlando”). This Addendum will be effective as of the date of last execution below.

PREMISES:

- A. The County and Visit Orlando have heretofore entered into the Agreement in order to provide funding in furtherance of Visit Orlando’s privately-established mission to promote and market tourism in Orange County; and
- B. The parties now wish to amend this Agreement to provide additional funding; and
- C. Pursuant to Section 4.4 of the Agreement, amendments thereto may be made by written instrument expressly approved by the Board and duly executed by both the County and Visit Orlando.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 2. Premises Incorporated by Reference; Form of Amendments. The premises hereof are incorporated in this Addendum by reference as if they were made a part hereof.

Section 3. Payments under to Visit Orlando under the Plan. Paragraph 1.1(e) of Section 1 of the Agreement is hereby amended as follows, with additions shown with underlining and deletions shown with ~~striketrough~~:

- (e) for fiscal year 2018/19 ~~2013/14 through 2017/18~~, ten ~~five~~ million dollars (\$~~10~~5,000,000.00) to be used for additional marketing and promotion campaigns as described in further detail in Sections 2.2 and 2.3 hereof (“Supplemental Marketing Funds”); plus

Section 4. Restrictions on Use of Additional Advertising Funds. Paragraph 2.2.2 of Section 2.2 of the Agreement is hereby amended as follows, with additions shown with underlining and deletions shown with ~~striketrough~~:

2.2.2 Visit Orlando agrees that Supplemental Marketing Funds shall be accounted for in the same manner and subject to similar restrictions on use as Additional Advertising Funds. Visit Orlando acknowledges that Orange County has authorized Supplemental Marketing Funds primarily for international and domestic marketing campaigns and, ~~at the time of this authorization, has a particular interest in programs focused on South and Central American markets~~ promoting the Orange County area as a tourist, convention, trade show and business travel destination, including the Convention Center. Supplemental Marketing Funds may be expended for the design, production, creation and purchase of advertising and marketing campaigns in various media that specifically benefit Orange County as a tourist, convention, trade show, sporting event and business travel destination. Such funds may also be expended for the direct, measurable costs associated with processing and responding to customer inquiries directly in response to such additional promotion and marketing activities. Supplemental Marketing Funds shall not be used for administrative

expenses for Visit Orlando, including but not limited to general overhead expenses, general expenses of maintaining the Visit Orlando website or call center, executive salaries, bonuses or other executive compensation or benefits. Supplemental Marketing Funds shall be subject to the same limitations on the use of Additional Advertising Funds for the promotion of destinations outside of Orange County, Florida as are set forth in 2.2.1 above. ~~For each year that Supplemental Marketing Funds are to be payable hereunder,~~ Visit Orlando shall prepare a report to the Tourist Development Council ("TDC") and Orange County on its proposed use of Supplemental Marketing Funds and shall similarly report the use of such funds and the results of such campaigns at the conclusion of fiscal year 2018/19 ~~each such year.~~

Section 5. Agreement. All other terms, conditions and obligations of the County and Visit Orlando arising from the Agreement not hereby modified or amended shall remain unaltered and in full force and effect.

Section 6. No Waiver. Nothing contained in this Addendum, waives any covenant or other default or any event that would become a default with the passage of time or the giving of notice, under the Agreement.

Section 7. Severability. The provisions of this Addendum are declared by the parties to be severable. However, the material provisions of the Agreement, as amended hereby, are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Addendum. Therefore, should any material term, provision, covenant or condition of this Addendum or the Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the litigation.

Section 8. Governing Law; Venue. This Addendum shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any action arising out of or related to this Addendum shall be in Orange County, Florida.

Section 8. Headings. The headings or captions of sections or paragraphs used in this Addendum are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Addendum.

[Signatures Appear on Following Pages]

WHEREFORE, this Addendum is entered into as of the latest date and year of execution below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

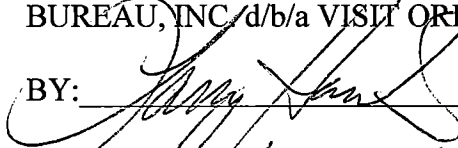
By: *Teresa Jacobs*
Teresa Jacobs
County Mayor

Date: 10.22.18

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: *Laketa Lewis*
Deputy Clerk

ORLANDO/ORANGE COUNTY
CONVENTION & VISITORS
BUREAU, INC. d/b/a VISIT ORLANDO

BY: 

NAME: LARRY HENRICHS

TITLE: COO/CFO

DATE: 9/27/18

ATTEST: 

TITLE: Executive Assistant to the COO/CFO