Agenda Report

DATE: November 16, 2010

TO: The Mayor and City Council

FROM: Sean P. Quinn, City Manager
Curt Johnston, Economic Development Manager
Karl Dumas, Project Manager

SUBJECT: Public Hearing and:

1. Adopt Resolution Confirming the Report of the Advisory Board and Levying an Assessment Against Hotel and Motel Businesses for Fiscal Year 2011 in Connection with the Tourism Business Improvement District and if There is Not a Majority Protest to the Levy of the Assessment, Approve the Following:

2. Resolution Authorizing an Agreement with Fairfield Tourism Association, Inc. to Administer Programs and Activities for the Tourism Business Improvement District for Fiscal Year 2011

RECOMMENDED ACTION
Hold public hearing and adopt resolutions.

STATEMENT OF ISSUE
The City Council preliminarily approved the report of the Tourism Business Improvement District (TBID) Advisory Board on November 2, 2010 and adopted Resolution 2010-298 declaring its intention to levy an assessment against hotel and motel businesses within the TBID. A public hearing is required by law for the levy and collection of an assessment within the TBID for the 2011 fiscal year. Collection of the assessments for fiscal year 2011 would begin January 1, 2011 and are anticipated to total approximately $345,050. The 2011 proposed 2% assessment for each hotel and motel is the same as that originally assessed in 2004. The proposed Agreement with Fairfield Tourism Association, Inc. (Association) will allow the City to transfer the fiscal year 2011 assessments to the Association for TBID activities.
DATE: November 16, 2010
SUBJECT: Public Hearing and Adopt Resolution Confirming the Report of the Advisory Board and Levying an Assessment Against Hotel and Motel Businesses for Fiscal Year 2011 in Connection with the Tourism Business Improvement District

DISCUSSION
On November 2, 2010 the City Council approved the Report of the TBID Advisory Board and adopted Resolution 2010-298 declaring its intention to levy a 2% assessment for hotel and motel businesses within the TBID for the upcoming year, and set this meeting as the time and place for a public hearing. The public hearing is necessary for the City Council to hear and consider protests, if any, to the resolution declaring its intention to levy and collect an assessment for fiscal year 2011 (calendar year) for hotel and motel businesses in the TBID. If there is not a majority protest, collection of the assessments for fiscal year 2011 would begin January 1, 2011. Collection and delivery of the assessments are handled by the Finance Department in coordination with the City Manager's Office. The total amount anticipated from the assessments is $345,050. The 2% assessment amount is the same as that originally assessed in fiscal year 2004 when the TBID was formed.

The Fairfield Tourism Association, Inc. Board of Directors comprises the TBID Advisory Board. If there is not a majority protest, approval of the second resolution will allow the City to retain the Association, a non-profit mutual benefit corporation formed for the purpose of implementing TBID activities. The Association will utilize the funds to enhance locally-based promotion efforts on behalf of the City. The work program for 2011 includes tasks to promote tourism, and marketing/advertising activities that benefit hotel and motel businesses in Fairfield.

FINANCIAL IMPACT
The Tourism Business Improvement District is funded by assessments collected from hotels and motels within the City. The total amount anticipated from the assessments is $345,050. No City funds are involved.

PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION
A public notice that included a complete copy of the resolution was published in the Daily Republic newspaper on November 14, 2010

ALTERNATIVE ACTION
The City Council can choose to modify the proposed assessment or types of improvements and activities to be funded with the revenues from the assessments.
DATE: November 16, 2010
SUBJECT: Public Hearing and Adopt Resolution Confirming the Report of the Advisory Board and Levying an Assessment Against Hotel and Motel Businesses for Fiscal Year 2011 in Connection with the Tourism Business Improvement District

DOCUMENTS ATTACHED
Attachment 1: Proposed Resolution
Attachment 2: Proposed Resolution
Attachment 3: Tourism Association Agreement

STAFF CONTACT
Karl Dumas
707.428.7454
kdumas@fairfield.ca.gov

Coordinated with: City Attorney
CITY OF FAIRFIELD

RESOLUTION NO. 2010-317

A RESOLUTION OF THE CITY COUNCIL CONFIRMING THE REPORT OF THE ADVISORY BOARD AND LEVYING AN ASSESSMENT AGAINST HOTEL AND MOTEL BUSINESSES FOR FISCAL YEAR 2011 IN CONNECTION WITH THE TOURISM BUSINESS IMPROVEMENT DISTRICT

WHEREAS, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq. (the "Law"), authorizes the City Council to levy an assessment against businesses within a parking and business improvement area, which is in addition to any assessments, fees, charges, or taxes imposed in the City; and

WHEREAS, pursuant to the Law, the City Council adopted Ordinance No. 2004-03 establishing the Tourism Business Improvement District (the "District") in the City of Fairfield; and

WHEREAS, the boundaries of the Tourism Business Improvement District (the "District") are generally described to include all hotel and motel businesses in the entire City Limits of Fairfield; and

WHEREAS, by previous resolution, the City Council appointed the Fairfield Tourism Association Inc., to serve as the Advisory Board for the District (the "Advisory Board") and the Advisory Board has prepared a report in connection with the proposed levy of an assessment against hotel and motel businesses in the District for fiscal year 2011; and

WHEREAS, in accordance with Section 36533 of the Law, the Advisory Board prepared and filed with the City Clerk a report entitled Tourism Business Improvement District, 2010 Hotel Association Annual Report (the "Report") and proposed 2011 budget; and, by previous resolution, the City Council preliminarily approved such report as filed; and

WHEREAS, the City Council has adopted a Resolution of Intention, Resolution No. 2010-298, declaring its intention to levy and collect an assessment for fiscal year 2011 against hotel and motel businesses in the District.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. Following notice duly given pursuant to law, the City Council has held a full and fair public hearing regarding the levy and collection of a 2% assessment against hotel and motel businesses within the District for the 2011 fiscal year. All interested persons were afforded the opportunity to hear and to be heard regarding protests and objections to the levy and collection of the assessment for fiscal year 2011. The City Council finds that there was no majority protest within the meaning of the Law. All
protests and objections to the levy and collection of the assessment and any and all other protests and objections are hereby overruled by the City Council.

Section 2. Based upon its review of the Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, and other reports and information, the City Council hereby finds and determines that (i) the hotel and motel businesses in the District will be benefited by the expenditure of funds raised by the assessment, (ii) the District includes all of the hotel and motel businesses so benefited; and (iii) the net amount of the assessment levied within the District for the 2011 fiscal year in accordance with the Report is apportioned by a formula and method which fairly distributes the net amount in proportion to the estimated benefits to be received by each such business.

Section 3. The City Council hereby confirms the Report as originally filed.

Section 4. The adoption of this Resolution constitutes the levy of a 2% assessment for the fiscal year 2011 (commencing January 1, 2011, and ending December 31, 2011).

Section 5. The City Council hereby declares that the proposed uses of the revenues derived from the assessments levied against hotel and motel businesses in the District are for the following facilities and activities:

a) The acquisition, construction, installation or maintenance of tangible property with a useful life of five years or more, including, but not limited to, the following: (i) Welcome Center sign, building, & interior improvements; (ii) trash receptacles; (iii) decorations; and (iv) permanent landscaping;

b) Promotion of public events which benefit hotel and motel businesses in the District and which take place within public places within the District;

c) Promotion of tourism within the District and marketing activities that benefit hotel and motel businesses located and operating in the District;

d) Advertising that features businesses located and operating in the District; and

e) Activities that benefit businesses located and operating in the District.
PASSED AND ADOPTED this 16th day of November, 2010, by the following vote:

AYES: COUNCILMEMBERS: ________________________________

NOES: COUNCILMEMBERS: ________________________________

ABSENT: COUNCILMEMBERS: ________________________________

ABSTAIN: COUNCILMEMBERS: ________________________________

______________________________
MAYOR

ATTEST:

______________________________
CITY CLERK
CITY OF FAIRFIELD

RESOLUTION NO. 2010 - 318

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING AN AGREEMENT WITH FAIRFIELD TOURISM ASSOCIATION, INC. TO ADMINISTER PROGRAMS AND ACTIVITIES FOR THE TOURISM BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2011

WHEREAS, the City Council adopted Ordinance 2004-03 on March 2, 2004, establishing a parking and business improvement area known as the Tourism Business Improvement District (the "TBID") pursuant to Section 36500 et seq. of the California Streets and Highway Code (the "Act"); and

WHEREAS, pursuant to the aforementioned Ordinance and the Act, a system of charges has been assessed upon hotel and motel businesses located within the TBID; and

WHEREAS, the City of Fairfield (the "City") desires to use charges levied and collected by the City to contract for the administration of programs and activities in connection with the TBID for Fiscal Year 2011; and

WHEREAS, the Fairfield Tourism Association, Inc., (the "Association") proposes to administer programs and activities in connection with the TBID for Fiscal Year 2011; and

WHEREAS, the City desires the Association to administer programs and activities in connection with the TBID for Fiscal Year 2011 and the City anticipates that $345,050 will be collected for the TBID for Fiscal Year 2011.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The City Council hereby approves and authorizes the execution of the Agreement by and between the City and the Fairfield Tourism Association, Inc., substantially in the form and content presented, with such changes as may be approved by the City Attorney.
Section 2. The City Manager is authorized to do all things necessary and proper to implement said Agreement.

PASSED AND ADOPTED this 16th day of November, 2010, by the following vote:

AYES: COUNCILMEMBERS: ________________________________

NOES: COUNCILMEMBERS: ________________________________

ABSENT: COUNCILMEMBERS: ________________________________

ABSTAIN: COUNCILMEMBERS: ________________________________

MAYOR

ATTEST:

CITY CLERK
AGREEMENT BY AND BETWEEN THE CITY OF FAIRFIELD AND THE FAIRFIELD TOURISM ASSOCIATION, INC. FOR THE CALENDAR YEAR 2011 OPERATION AND ADMINISTRATION OF THE FAIRFIELD TOURISM BUSINESS IMPROVEMENT DISTRICT

THIS AGREEMENT is made and entered into as of the _____ day of ____________, 2010, by and between the CITY OF FAIRFIELD, a municipal corporation ("City") and the Fairfield Tourism Association, Inc., a California nonprofit mutual benefit corporation (the "Corporation").

WHEREAS, City Ordinance No. 2004-03, adopted March 2, 2004 (the "Ordinance"), established the Fairfield Tourism Business Improvement District (the "District") under the provisions of the Parking and Business Improvement Area Law of 1989, Section 36500 et seq. of the California Streets and Highways Code (the "Law"); and

WHEREAS, pursuant to the Law and the Ordinance, the City is authorized to levy and collect an annual assessment (the "Assessment") from hotel and motel businesses in the City for the purpose of acquiring, constructing, installing or maintaining improvements and promoting activities which will benefit tourism within the District; and

WHEREAS, the City has appointed the Board of Directors of the Corporation (the "Board of Directors") as the advisory board for the District; and

WHEREAS the Corporation has available personnel, resources and expertise to undertake improvements and implement activities within the City which are permitted under the Law and the Ordinance to be funded with proceeds of the Assessment; and

WHEREAS, the Corporation is qualified to undertake and administer such improvements and activities within the City and is willing to do so.

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

1. CONTRACT ADMINISTRATION.

Except as expressly provided herein, the City's Economic Development Division Manager or his or her designated representative shall be the City's representative for the administration of this Agreement. All activities performed by the Corporation shall be coordinated with this person.
The Corporation shall designate a person to be the Corporation's representative for the administration of this Agreement and, subject to the direction and authorization of the Board of Directors, to be the contact person for, and in charge of, all actions to be taken on behalf of the Corporation pursuant to this Agreement.

2. **TERM.**

Initial Term. The term of this Agreement commences on January 1, 2011 and shall continue until December 31, 2011, inclusive, unless earlier terminated in accordance with this Agreement.

Termination. The City may terminate this Agreement immediately upon any breach of Sections 15 (Insurance Requirements) or 17 (Conflict of Interest). In addition, either the City or the Corporation, upon at least 30 days prior written notice, may terminate this Agreement with or without cause. Within 45 days of the effective date of any termination, the City shall reimburse the Corporation for work which has been performed as of the termination date or which is in progress and cannot prematurely be terminated by virtue of contractual commitments. Unexpended and unencumbered funds provided to the Corporation by the City pursuant to this Agreement and all tangible assets purchased wholly with such funds shall be immediately returned to the City. The Corporation shall not purchase assets using a combination of funds derived from Assessments and other resources available to the Corporation without the prior written consent of the City.

3. **SCOPE OF SERVICES.**

Corporation shall administer the work program for the District including but not limited to the projects outlined below:

Tourism Promotion:

1. Development of an annual budget for tourism promotion;
2. Promotion of public events which benefit hotel and motel businesses in the District and which take place on or in public places within the District;
3. Promotion of tourism within the District and marketing activities that benefit hotel and motel businesses located and operating in the District;
4. Advertising that features businesses located and operating in the District;
5. Hold a special event recognizing and honoring tourism in Fairfield;
6. Coordination with all tourism-related businesses within the District and Travis Air Force Base; and
7. Visit each hotel/motel within the District and meet with the hotel operator at least once during the year and provide written account of the items discussed at such meeting to the City in the Quarterly Progress Report accompanying each disbursement request outlined in Section 4 herein.
Marketing Plan:

1. Concentrated marketing of member hotels and services provided;
2. Implement marketing recommendations from the SMG 2007 marketing plan update;
3. Cooperative marketing with tourism-related entities in region;
4. Contract with management company for reader board advertising process management.

Visitor Center:

1. Operate a physical office and also maintain a web based location accommodating visitor inquiries and fulfillment;
2. Establish a program to operate and staff a Visitor Center;
3. Establish a program to provide mobile/digital visitor information and a directional and way-finding system consistent with advances in information technology.

Coordination of Advisory Board Report

1. Prepare the report of the Tourism Business Improvement District Advisory Board for fiscal year 2011 and submit to the City Clerk by October 10, 2011.

4. TIMETABLE FOR PLANS AND REPORTS.

Corporation shall submit to the City project plans and reports, including the following: Quarterly Reports - By the 30th day of the first month following each quarter,(i.e., April 30, 2011), submit a Quarterly Progress Report for the previous quarter to the Economic Development Division Manager.

Annual Report - By January 30, 2011, submit a report outlining the proposed work program and budget for the current fiscal year. This report shall be coordinated with information contained in the previous year's submittal of the Advisory Board Annual Report to the Fairfield City Clerk in connection with the proposed levy of an assessment against businesses in the District.

Statement of Income and Expenses - Notwithstanding the termination date of this Agreement, Corporation shall submit to City by January 30, 2011, a statement of income and expenses of Corporation in relation to the District, covering the period from January 1, 2010 to December 31, 2010, for the District, by an Independent Certified Public Accountant, and by January 30, 2012, a statement of income and expenses of the Corporation in relation to the District, covering the period from January 1, 2011 to December 31, 2011, for the District by an Independent Certified Public Accountant.
5. **DISBURSEMENTS.**

The budget for fiscal year 2011, commencing January 1, 2011 and ending December 31, 2011, will be equal to the amount charged and collected by City from businesses within the District during that period. This amount is expected to be $345,050. No more than 25 percent of the assessment collected will be used to cover District programs management including, but not limited to, District mailings, Board meetings and supplies. The remainder of the budget will be spent on the tourism promotion activities; acquisition, construction, installation or maintenance of public improvements; marketing and advertising activities.

Disbursements shall be subject to Corporation providing a progress report for the prior quarter to City with each disbursement request. Corporation shall submit a request each quarter for the disbursement of the amount charged to businesses within the District for fiscal year 2011. Such request can be made no earlier than the 30th day of the month following the end of a calendar year quarter. For example, for the calendar year quarter ending March 30th, Corporation can submit a request for disbursement on April 30. However, any such disbursement request must be accompanied by a Quarterly Progress Report to City and supporting documentation of expenditures incurred during the quarter of the fiscal year, and an itemized list of proposed expenditures for the remaining quarters of fiscal year 2011. City may withhold payment of funds if not satisfied with the Corporation's work. Disbursement request must also contain a statement that no revenues disbursed by CITY have been or will be used for purposes other than those authorized by this Agreement. Corporation shall provide a Tax Identification number to City for billing purposes.

If, after review of the request, the Economic Development Division Manager determines that such request is reasonable and within the projected revenues from the District, he or she shall authorize the Finance Director to disburse additional funds to Corporation as they are received. If the amount of assessment funds projected to be collected is less than the total budget, work program adjustments will be made. The amount to be disbursed shall not exceed the amount received from businesses within the District for fiscal year 2011 (notwithstanding the addition of any interest payments).

Payment shall be made to Corporation at the address identified pursuant to the Notices Section below.

6. **CORPORATION AN INDEPENDENT CONTRACTOR.**

The Corporation, in the performance of the rights and obligations existing under this Agreement, shall act as and be an independent contractor and not an agent or employee of the City. The City shall not exercise control over the Corporation's method of performance of its obligations or duties, except as set forth herein, and desires to obtain only an end result. The City shall have no liability or responsibility
for payments of any wages or benefits to the Corporation's employees for whom the Corporation shall bear sole responsibility and liability.

7. **BOOKS AND RECORDS.**

The Corporation shall keep all related books and records in connection with the services performed under this Agreement for a period of at least three years, and agrees, upon the City’s request, to make them available to the City or any authorized representative of the City for inspection during normal business hours.

8. **PUBLIC MEETINGS.**

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

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

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

9. **DATA SHARING.**

Each party, upon the request of the other, shall make available to the other any additional information in its possession as may be reasonably necessary to operate and administer activities for the District.

10. **COLLECTION OF ASSESSMENTS.**

The Corporation understands and agrees that the levy of Assessments by the City shall be in the sole discretion of the City Council. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to levy Assessments against businesses in the District. The City shall have no liability to the Corporation for its decision to not levy Assessments or in connection with the
amounts of any Assessments levied. The Corporation understands and agrees that the Ordinance may be amended from time to time by the City Council.

In any fiscal year, if the City levies Assessments against hotels and motels in the City, pursuant to the terms of the Ordinance, the City shall collect Assessments to finance District improvements and activities.

11. USE OF FUNDS; AUDIT REQUIREMENT.

The Corporation may expend any funds received pursuant to this Agreement only for the purposes authorized by the Ordinance and only in accordance with the Annual Report, including the budget, as approved by the City Council for the applicable fiscal year.

The Corporation will establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to the District under this Agreement and shall substantiate all such costs, meeting acceptable standards for major public entities in Northern California and complying with any applicable Federal standards. The system shall meet the minimum fiscal and internal control requirements as reasonably determined by the City. In addition, within 120 days after the end of each fiscal year or the effective date of a termination pursuant to Section 2 above, the Corporation shall submit to the Economic Development Division Manager an audit report, prepared by a person or company reasonably approved by the City in accordance with the City's policies, of the District's expenditures and completed activities for the preceding fiscal year.

12. ASSIGNMENT.

The parties agree that the identity, expertise and experience of the Corporation are material considerations for this Agreement. The Corporation shall not assign or transfer any interest in this Agreement nor the performance of any of the Corporation's obligations hereunder without the prior written consent of the City.

13. NO OTHER CONTRACTS.

During the term of this Agreement, City agrees that it shall not contract with any other person or entity to operate and administer the District.

14. INDEMNIFICATION OF CITY.

Corporation shall hold harmless, defend and indemnify City and its elective and appointive boards, commissions, officials, officers, agents, employees, and volunteers from and against any and all liability, loss, damage, expense, costs (including, without limitation, attorney's fees and costs of litigation) of any nature arising out of or in connection with: (a) the negligence or willful misconduct of
Corporation or its officials, officers, agents, employees and volunteers; (b) Corporation's performance of its obligations and conduct of its agents under this Agreement; or (c) Corporation's failure to comply with any provision of this Agreement; except such loss or damage which was caused by the gross negligence or willful misconduct of the City or its officials, officers, agents, employees, and volunteers.

15. INSURANCE REQUIREMENTS.

Without limiting the Corporation's indemnification of the City, the Corporation agrees to have and maintain the policies set forth in EXHIBIT A, entitled INSURANCE which is attached hereto and incorporated herein by this reference. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The Corporation agrees to provide the City with copies of said policies, certificates and/or endorsements before work commences under this Agreement. The City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate this Agreement immediately and pursue any and all legal or equitable remedies for such breach.

16. NONDISCRIMINATION.

The Corporation shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, sexual orientation, marital status, disability or national origin in connection with or related to the performance of this Agreement.

17. CONFLICT OF INTEREST.

The Corporation shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement. The Corporation shall disclose to the City any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement within a reasonable time after discovery of such conflict of interest by the Corporation. The City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate this Agreement immediately and pursue any and all legal or equitable remedies for such breach.

18. WAIVER.

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

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: Economic Development Division Manager  
City of Fairfield  
1000 Webster Street, 2nd Floor  
Fairfield, CA 94533-4883  
Fax: (707) 425-2594

To Corporation: Fairfield Tourism Association, Inc.  
1111 Webster Street  
Fairfield, CA 94533-4841  
Attention: Executive Director  
Fax: (707) 399-2445

or to such other address or addressee as may be designated by notice in accordance with this Section. Notice shall be deemed effective on the date personally delivered or, if mailed, upon receipt.

A copy of any notice of a legal nature, including, but not limited to, any claims against the City, its officers or employees shall also be served in the manner specified above to the following address:

City of Fairfield  
City Attorney  
1000 Webster Street, 4th Floor  
Fairfield, CA 94533-4883

20. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to the matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by both parties to this Agreement.

21. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of California.
22. **TIME OF ESSENCE.**

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

23. **ATTORNEY'S FEES.**

If a legal action or proceeding is brought by any party because of default under this Agreement, or to enforce a provision hereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable attorney's fees and court costs from the losing party as determined by the court in which said action or proceeding is pending.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

[Signatures appear on the following page.]
ATTEST:

CITY OF FAIRFIELD,
a municipal corporation

City Clerk

APPROVED AS TO FORM:

City Manager

City Attorney

FAIRFIELD TOURISM ASSOCIATION, INC.
a California nonprofit mutual benefit corporation

By: ____________________________

Print Name

Print Title

By: ____________________________

Print Name

Print Title
EXHIBIT A

INSURANCE REQUIREMENTS

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

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

   a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of $1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

   b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of $1,000,000 per accident for bodily injury and property damage.

   c) Workers’ Compensation insurance as required by the State of California and Employers’ Liability insurance, each in the amount of $1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

   If checked below, the following insurance is also required.

   - Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of $1,000,000 per occurrence.
   - Pollution Liability Insurance in the minimum amount of $1,000,000 per occurrence.
   - Garage Keepers Insurance in the minimum amount of $1,000,000 per occurrence.
   - X Fidelity / Crime / Dishonesty Bond in the minimum amount of $250,000.
   - X MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
   - Builder’s Risk / Course of Construction Insurance in the minimum amount of $__________.
3) **INSURANCE PROVISIONS**

a) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CORPORATION shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CORPORATION; products and completed operations of the CORPORATION; premises owned, occupied or used by the CORPORATION; or automobiles owned, leased, hired or borrowed by the CORPORATION. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.

ii) For any claims related to this project, the CORPORATION's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CORPORATION's insurance and shall not contribute with it.

iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

iv) The CORPORATION'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.

v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CORPORATION's policy limits of coverage.