

## **MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION**

THIS MAINTENANCE AGREEMENT (Agreement) is made and entered into by and between the City of San Diego, a municipal corporation (City), and College Area Economic Development Corporation, a non-profit corporation (Contractor).

### **RECITALS**

WHEREAS, the City desires to retain the services of Contractor to provide administration of the maintenance services to College Heights Maintenance Assessment District (District); and

WHEREAS, the boundaries of the District are generally defined as follows: along El Cajon Boulevard from 59<sup>th</sup> Street to Rolando Boulevard, College Avenue from City parcels to Estelle Street, 62<sup>nd</sup> Street from El Cajon Boulevard to Fire Station, El Cajon Boulevard from 54<sup>th</sup> Street to 59<sup>th</sup> Street, Rolando Boulevard to City border with La Mesa, Montezuma Road from Reservoir Drive to El Cajon Boulevard; and

WHEREAS, a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, signed ballots in support of Contractor's role to assume the responsibility for administration of Contracts for Goods and Contracts for Services (as these terms are defined in San Diego Municipal Code 65.0202) for the District in accordance with the San Diego Municipal Code section 65.0212; and

WHEREAS, every year the City Council approves an updated engineer's report that includes a budget for the services to be provided within the district for the applicable fiscal year (District Budget);

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other valuable consideration which is hereby acknowledged, City and Contractor hereby agree as follows:

### **ARTICLE I - SCOPE OF SERVICES**

#### **A. General Services**

1. Contractor shall provide administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in accordance with the "Maintenance Assessment Districts Ordinance" (Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code) and the "Landscaping and Lighting Act of 1972" (Part 2 of Division 15 of the California Streets and Highways Code), and as set forth in the assessment engineer's report approved by the City Council in connection with the formation of the District (Engineer's Report).

2. Contractor shall perform all duties as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement and the Engineer's Report.

**B. Specific Requirements**

1. Contractor, at a minimum, shall provide the maintenance standards described in the Scope of Services (Exhibit A) within the boundaries of the District and for any Zone within the District, consistent with the City Council-approved current fiscal year District Budget afforded for such maintenance services and Exhibit B.
2. Contractor shall conduct on-site inspections of all work done under this Agreement in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
3. Contractor shall correct any deficiency reported by City staff pursuant to Section II(B)(1) of this Agreement within thirty calendar days.
4. Contractor shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
5. Contractor shall provide at least one noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or designated property owners' representatives within the District. The noticed meeting shall be used to finalize plans and specifications for improvements and maintenance as described in the Engineer's Report, evaluate the performance of any maintenance contractor, and advise Contractor regarding the improvements and regular maintenance as described in the Engineer's Report for the District. With respect to any such meeting, Contractor shall use its best efforts to contact either orally or in writing the City, the relevant community planning group or designated property owners' representatives of the District, and provide notice in community newspapers, if available.
6. Contractor shall submit to the City no later than February 1 of each year a line item budget for the upcoming fiscal year. Contractor shall be required to budget a minimum of 10 percent as a contingency reserve. This proposed budget for services in the District will be brought forward to City Council for consideration as the District Budget for the upcoming fiscal year.
7. Contractor shall maintain a separate set of books and records of costs associated with Contractor's responsibilities under this Agreement for audit at the expense of the District.

## **ARTICLE II - SERVICES PROVIDED BY THE CITY**

### **A. Budget**

1. The City will carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City will review and consider Contractor's proposed budget for maintenance operations in preparing and approving the District Budget.
3. The City may, at its sole discretion, amend line items in the District Budget upon a written request from Contractor, provided the amendments would not increase the total amount authorized for reimbursement to Contractor.

### **B. Services**

1. City staff shall conduct at least four District inspections during the term of this agreement to evaluate compliance with the maintenance standards. If, after City staff conducts an inspection, Contractor is found to be deficient with respect to any standard or if City staff finds that the District is not being properly administered by Contractor, a report of such findings will be presented to Contractor. If the deficiency is not satisfactorily corrected within thirty calendar days, the report will then be presented to the City Council. The City Council may use such findings as the basis for termination of this Agreement pursuant to Article VI hereof and San Diego Municipal Code section 65.0212.
2. The City reserves the right to deploy its public safety personnel in a manner which, in the City's sole discretion, best serves the needs of the public. Further, nothing in this Agreement shall be deemed to abrogate or waive the provisions of California Government Code section 845.
3. The City will coordinate the collection of assessments with the County of San Diego and provide general administrative services, assistance, and information to Contractor.

## **ARTICLE III - COMPENSATION AND REIMBURSEMENT**

### **A. Invoices**

1. Contractor shall submit monthly reimbursement requests to the City along with all supporting receipts, invoices, checks, payroll statements, bank statements, and all other records of services performed. Each expenditure submitted for reimbursement must show as cleared on the submitted bank statements.
2. The City will reimburse Contractor from District assessment funds within thirty days of receipt of a proper reimbursement request. The request must include both a Trial Balance and Summary of Expenses as of the period claimed. The Summary of Expenses shall detail expenses by expenditure category and line item

as reflected in the City Council-approved current fiscal year District Budget and in accordance with Exhibit B.

3. All invoices shall include the names and rates of pay for contracted personnel who have performed services on behalf of the District, the hours worked, and details of any reasonable and necessary out-of-pocket expenses. Reimbursement requests shall be signed by a representative of Contractor's board, not the Executive Director.
4. Contractor shall not request, nor shall it be entitled to, reimbursement under this Agreement for any expenditure that has been or will be properly charged to a funding source other than District assessment funds.
5. Contractor shall not request reimbursement under this Agreement for any expenditure that has been or will be properly charged to a funding agency other than the City.

**B. Compensation**

1. Contractor shall be compensated for its services pursuant to this Agreement solely by the terms of this Section III(B). In any given fiscal year, Contractor is entitled to receive an additional amount of up to 15 percent of budgeted annual expenditures, as reflected in the District Budget, in order to pay for the wages, salaries, and benefits of Contractor's administrative employees, but only to the extent such wages, salaries, and benefits compensate for activities directly undertaken for the administration of the District. Such additional amount shall constitute Contractor's "Administration." Contractor shall not be authorized to include charges for Administration on any amounts paid by Contractor that contain any administrative charges by the billing entity. If Contractor enters into any contracts with third parties for the performance of any of Contractor's duties under this Agreement and any such contract includes an administrative charge, Contractor shall not be entitled to receive Administration reimbursements for its own administration activities related to the work performed by third party contractors.
2. The Administration reimbursement to Contractor shall be limited to 15 percent of the budgeted annual expenditures in the District.
3. The City shall be compensated from the assessment revenues the greater of \$3500 or 4 percent of budgeted annual expenditures for administrative services associated with the annual budget processing, property tax enrollment and collections, professional engineering services, on-site inspections, and audit services from the District Budget.
4. The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a City funding source other than District assessment funds.

5. The City will not reimburse Contractor for any expenditure that has been or may be properly charged to, or reimbursed by, a public agency other than the City.

**C. Advances**

1. Upon a written request from Contractor, the City may make an annual cash advance of three months of working capital to Contractor based on the District's monthly cash flow budget requirements related to the City Council-approved current fiscal year District Budget. If the District reserves are not adequate to cover the working capital advance request, an advance will be based on available cash at the time of the request.
2. The advance will be returned on or before the termination of this Agreement as either a reduction of the final reimbursement request or a transfer of funds from Contractor.

**D. Suspension Of Payment.**

1. If Contractor fails to perform any of its obligations as set forth in this Agreement, the City shall have the right to suspend the payment of Administration costs to Contractor pursuant to Article III until such time as Contractor is in compliance with the terms of this Agreement. If, as a result of Contractor's failure to perform, the City elects to withhold payment, the City shall give Contractor written notice of its intention to suspend payment of Administration costs until Contractor has cured its noncompliance. Such notice shall provide Contractor with a description of the failure to perform upon which the City has based its suspension of payment hereunder. Upon the performance by Contractor of its obligations under this Agreement, the City shall resume payments of Administrative costs to Contractor in conformance with the terms of Article III set forth above.

**ARTICLE IV - EFFECTIVE DATE AND TERM**

Upon the execution of this Agreement by the parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2011 and continue for one year until June 30, 2012 [Term], unless terminated earlier in accordance with the terms of this Agreement. City shall have the option to renew this Agreement in one-year increments for up to four additional years. In no event shall the term of this Agreement extend beyond June 30, 2016.

**ARTICLE V - DOCUMENTS, RECORDS, AND REPORTS**

**A. Ownership Of Documents**

1. Once Contractor has been compensated for services performed, all documents, including, but not limited to reports and maps prepared in connection with or related to the Scope of Services, shall be the property of the City.

2. The City's ownership of these documents includes all incidental rights, whether or not the work for which they were prepared has been performed.
3. This Section V(A) shall apply whether the Agreement is terminated by the completion of the services, by the expiration of this Agreement under Article IV, or in accordance with any other provisions of this Agreement.
4. Notwithstanding the foregoing, Contractor shall have the right, at its sole cost, to make and retain separate copies of the documents.

**B. Audit And Inspection Of Records**

1. At any time during normal business hours and as often as the City deems necessary, Contractor and all subcontractors shall make available to the City for examination and copying at reasonable locations within the City of San Diego all data and records relating to all matters covered by this Agreement. Contractor and all subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.
2. Contractor and subcontractors shall maintain such data and records for a period of three years following receipt of the final payment of this Agreement. With respect to receipts, invoices, checks, payroll statements, bank statements, and all other evidence of payments for which Contractor is reimbursed by the City pursuant to this Agreement, Contractor shall maintain such documentation at its principal place of business in the City of San Diego for the required period of time. With respect to all records covered by this Section V(B), if Contractor does not make them available within the City of San Diego, then Contractor shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

**C. Financial Reports**

Contractor shall provide an audited financial statement of all reimbursements and working capital advances paid to Contractor with District funds within ninety days after the end of Contractor's fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) in accordance with Generally Accepted Auditing Standards (GAAS). The statements must include a Statement of Expenditures of the District's funds identified in the same expenditure classifications as contained in the City Council-approved District Budget and show a comparison to the budgeted amounts, and a Statement of Compliance with the terms of this Agreement signed by Contractor. Failure to comply with these requirements could result in suspension of any current payments or possible future funding.

## ARTICLE VI - TERMINATION

### A. City's Right To Terminate For Default

1. If Contractor fails to perform or adequately perform any obligation required by this Agreement, Contractor's failure shall constitute a default. The Mayor or designee shall promptly give Contractor written notice of the occurrence of the default, and shall allow Contractor thirty days thereafter to cure the default, or to submit a written plan of action to cure such a default within a reasonable and safe period of time thereafter. Failure to cure the default or timely submit the plan of action within the thirty-day period, or failure to adhere to the plan of action, shall entitle the City Council to terminate this Agreement in accordance with San Diego Municipal Code section 65.0212 and Section VI(C) below.
2. Notwithstanding the foregoing, if the nature of the default could endanger the public's health and safety, Contractor shall cure the default within twenty-four hours of receipt of notice of the default. If Contractor fails to fully and timely cure the default, then the City Council may, in its sole and absolute discretion, terminate this Agreement.

### B. Termination For Convenience

Notwithstanding any other provision of this Agreement, the City may terminate this Agreement for any reason and at any time, provided the termination is carried out in accordance with San Diego Municipal Code section 65.0212 and Section VI(C) below.

### C. Notice

1. The City Council may terminate this Agreement with Contractor at any time provided:
  - (a) a public hearing is held on the City's intention to terminate this Agreement with Contractor;
  - (b) Contractor is provided thirty calendar days' notice of the public hearing on the City's intention to terminate this Agreement;
  - (c) a notice of the public hearing is mailed at least fifteen calendar days prior to the public hearing to each property owner within the District; and
  - (d) the City Council determines at the conclusion of the public hearing that it is in the best interests of the District to terminate this Agreement with Contractor.
2. Upon termination of this Agreement, the City shall assume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later

than thirty calendar days after receipt of written notice of termination. Until the actual transfer of these assets is complete, Contractor shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District. Contractor may be entitled to permitted costs during such period as set forth in Article III.

**D. City's Right To Terminate For Bankruptcy Or Assignment For The Benefit Of Creditors**

If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon Contractor, immediately cancel and/or terminate this Agreement, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement.

**E. No Waiver Of Other Remedies**

The rights and remedies of the City enumerated in this Agreement are cumulative and shall not limit the City's rights under any other provision of this Agreement or the San Diego Municipal Code, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

**F. Contractor's Right To Terminate**

Contractor may terminate this agreement for any reason after providing ninety calendar days written notice of its intent to terminate to the City. Contractor shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, Contractor shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District.

**ARTICLE VII - INDEPENDENT CONTRACTOR  
AND DISTRICT MANAGEMENT**

**A. Delegation Of Duties**

Contractor is an independent contractor. Contractor shall administer the District services and activities and may engage one or more contractors to provide routine maintenance services including trash collection and disposal, graffiti removal, repair, landscaping, and lighting improvements. Accordingly, Contractor's duties specified in this Agreement may not be delegated by Contractor without the prior written consent of the City.

**B. Parties' Representatives**

1. Contractor agrees that a designated officer of Contractor (Contractor Representative) shall be the primary contact between Contractor and the City for the purposes of this Agreement (see Exhibit C). The Contractor Representative shall coordinate Contractor's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by Contractor that the Contractor Representative shall act as billing agent for work provided by Contractor. Contractor shall notify the City within ten calendar days of replacement of the Contractor Representative and shall provide an amended Exhibit C to reflect the replacement.
2. Contractor's management of the services of this Agreement is of substantial concern and importance to the City, requiring coordination with City services. The quality of performance will reflect on the City and its management. Accordingly, the City requires Contractor to inform the City on a regular basis of any changes in the Officers of Contractor and of the identity of its subcontractors and their areas of responsibility.
3. The Mayor or designee (City Representative) shall be the primary contact between the City and Contractor for purposes of this Agreement (see Exhibit C).

**ARTICLE VIII - COVENANTS AND CONDITIONS**

All provisions hereof expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed shall be deemed to be both covenants and conditions.

**ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW**

Contractor shall comply with all applicable laws, rules, regulations, ordinances, resolutions, and policies of the federal, state, and local governments as they pertain to this Agreement. In addition to the foregoing, Contractor shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any law, rule, ordinance, or regulation. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

**ARTICLE X - ACCEPTABILITY OF WORK**

The City shall decide any and all questions that may arise as to the quality or acceptability of the services performed, the manner of performance, the interpretation of instructions to Contractor, the acceptable completion of this Agreement, and the amount of compensation due. In the event Contractor believes that any requirement of the City interferes with or affects the independence of Contractor, Contractor shall confer with the City in order to resolve any possible conflict. In the event Contractor and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to Contractor in this Agreement, the City or Contractor shall give

to the other written notice thereof. No later than ten calendar days thereafter, Contractor and the City shall each prepare a written report that supports its position and file the same with the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to Contractor. This is not intended to be in any arbitration dispute between the parties of this Agreement.

#### **ARTICLE XI - INFORMAL DISPUTE RESOLUTION**

If Contractor and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The parties shall endeavor thereafter to meet within five days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

#### **ARTICLE XII - INDEMNIFICATION**

Contractor agrees to defend, indemnify, protect and hold the City, and all of its officers, agents and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to, any person, including injury to Contractor's officers, agents, and employees, and all claims that may arise from or are directly connected with or attributable to the negligence or failure to perform professional services or other obligations of this Agreement, or are caused or claim to be caused by the acts or omissions of Contractor, its officers, agents or employees, and all expenses of investigating and defending against same; provided, however, that this duty to defend, indemnify and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the City, its officers, agents or employees.

#### **ARTICLE XIII - INSURANCE**

##### **A. Prerequisites To Commencement Of Work**

1. Prior to the execution of this Agreement by the Parties and approval by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
  - (a) obtain City approval of each insurance company (or companies), as required in Section B below;
  - (b) obtain all insurance coverage required in Sections XIII(C); XIII(D); and XIII(E), below;

- (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections XIII(C); XIII(D); and XIII(E), below; and
  - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections XIII(C); XIII(D); and XIII(E), below.
2. Contractor shall not allow any subcontractor to commence work on public property, unless and until all insurance required of the subcontractor, as described in Sections XIII(C), XIII(D), and XIII(E), below, has been obtained.

**B. Insurance Companies**

All insurance coverage required in Sections XIII(C), XIII(D), and XIII(E), below, shall be carried only by insurers that have been rated “A-,VI” or better, by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted “surplus lines” carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

**C. Commercial General Liability Insurance**

1. At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of at least \$1,000,000 per occurrence, subject to an annual aggregate of at least \$2,000,000.
2. The policy shall expressly provide that:
- (a) all defense costs shall be outside the limits of the policy; and
  - (b) the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that:
- (a) The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
  - (b) the policy is primary and non-contributory to any insurance that may be carried by the City.

4. There shall be no endorsement or modification of the policy limiting the scope of coverage for insured versus insured claims, or for contractual liability.

**D. Commercial Automobile Liability Insurance**

1. At all times during the term of this Agreement, Contractor shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of that form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of at least \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that The City, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

**E. Workers' Compensation Insurance**

1. At all times during the term of this Agreement, Contractor shall maintain in full force and effect Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
2. The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

**F. Endorsements**

All endorsements required under Sections XIII(C), XIII(D), and XIII(E) above shall be in full force and effect for the entire term of this Agreement.

**G. City's Right To Request And Review Contractor's Insurance Policies**

The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections XIII(C), XIII(D), and

XIII(E) above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to the City. If the City determines that such insurance coverage, limits, deductibles, and/or self-insured retentions are unacceptable, the City and Contractor shall amend this Agreement to adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and Contractor shall comply with any such amendment.

**H. Deductibles And Self-Insured Retentions**

All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City.

**I. Contractor's Liability Not Limited To Insurance Coverage**

Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

**J. Modifications Affecting City's Exposure To Loss**

Contractor shall not modify any policy (or endorsement thereto) that increases the City's exposure to loss for the duration of this Agreement.

**K. Additional Insurance**

Contractor may obtain additional insurance not required by this Agreement.

**L. Expiration Of Policies**

At least thirty calendar days prior to the expiration of each insurance policy required herein, Contractor shall provide the City an insurance certificate, showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

**M. Requirement To Maintain Insurance Coverage**

Contractor maintenance of the insurance coverage required in Sections XIII(C), XIII(D), and XIII(E) above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal during the term of this Agreement, shall constitute a material breach of contract.

**ARTICLE XIV - CONFLICT OF INTEREST**

- A.** Contractor is aware of and is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq., and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

- B.** If, in performing the professional services set forth in this Agreement, Contractor makes, or participates in, a “governmental decision” as described in Title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department’s conflict of interest code, Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor’s relevant financial interests.
- C.** If the City requires Contractor to file a Statement of Economic Interests as a result of the professional services performed, Contractor shall be considered a “City Official” subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- D.** Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City’s determination that Contractor is subject to a conflict of interest code. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to a conflict of interest code.
- E.** Contractor shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

If Contractor violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects Contractor to liability to the City for attorneys’ fees and all damages sustained as a result of the violation. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of sections 1090 *et seq.* 87100 *et seq.* of the California Government Code relating to conflicts of interest for public officers and employees, as well as the conflict of interest codes of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall immediately terminate this Agreement by giving written notice thereof. Contractor agrees to abide by section 87100 *et seq.* of the California Government Code during the term of this Agreement. The City may determine that Contractor is subject to a conflict of interest code and is required to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City’s request, Contractor shall submit the necessary documentation.

- F.** Contractor’s personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any subcontractor or potential subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

- G.** If Contractor violates any conflict of interest law, or any of the provisions of this Article XIV, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit E. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

#### **ARTICLE XV - ATTORNEYS' FEES**

If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.

#### **ARTICLE XVI - NOTICE**

Unless otherwise provided in this Agreement, in all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. Unless otherwise provided by notice in writing from the respective parties, notice shall be addressed as follows.

Notice to the City shall be addressed:

City of San Diego  
Economic Development Department  
1200 3<sup>rd</sup> Ave, 14<sup>th</sup> Floor, MS-56D  
San Diego, California 92101

Notice to Contractor shall be addressed:

College Area Economic Development Corporation  
PO Box 151176  
San Diego, CA 92175-1176

Either party may change the address for its receipt of notice hereunder by giving notice thereof in the manner herein specified. Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

#### **ARTICLE XVII - CONTRACTS AWARDED BY CONTRACTOR**

Contractor shall comply with the San Diego Municipal Code sections 65.0212 (c)(6) and 65.0214 for the award of any contract pertaining to the District.

## ARTICLE XVIII - NON-DISCRIMINATION REQUIREMENTS

### A. Equal Opportunity Contracting Program

Contractor and each of its Subcontractors shall comply with the City's Equal Opportunity Contracting Consultant Requirements, which is attached hereto as Exhibit D and incorporated herein by this reference.

### B. Non-Discrimination Ordinance

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between Contractor and any subcontractors, vendors and suppliers.

### C. Compliance Investigations

Upon the City's request, Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination In Contracting Ordinance (Municipal Code sections 22.3501-22.3517.). Contractor understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination In Contracting Ordinance. Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination In Contracting Ordinance apply only to violations of said Ordinance.

## ARTICLE XIX - STORM WATER POLLUTION PREVENTION

Contractor and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301 *et seq.*, in performing or delivering services in the District, regardless of location.

**ARTICLE XX - DRUG-FREE WORKPLACE**

Contractor agrees to comply with the City’s Drug Free Workplace requirements and shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by Contractor pursuant to this Agreement shall contain this provision.

**ARTICLE XXI - AMERICANS WITH DISABILITIES ACT**

Contractor shall comply with Council Policy 100-04, adopted by Resolution No. R-282153 relating to the federally-mandated Americans with Disabilities Act (ADA). Contractors and subcontractors will be individually responsible for their own ADA program.

**ARTICLE XXII – EQUAL BENEFITS ORDINANCE**

Contractor shall comply with the City of San Diego’s Equal Benefits Ordinance (San Diego Municipal Code, Chapter 2, Article 2, Division 43, sections 22.4301-22.4308), which requires Contractor to offer the same benefits to employees with domestic partners as are offered to employees with spouses. The City’s execution of this Agreement shall be contingent upon receipt of Contractor’s Certification of Compliance (Exhibit F) wherein Contractor agrees to maintain equal benefits for its employees for the duration of this Agreement. The failure of Contractor to maintain equal benefits for employees shall be a material breach of this Lease.

**ARTICLE XXIII - EMPLOYMENT OF CITY STAFF**

This Agreement may be unilaterally and immediately terminated by the City if Contractor employs an individual, who, within twelve months immediately preceding such employment did, in the individual’s capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of Contractor for this project.

**ARTICLE XXIV - MISCELLANEOUS PROVISIONS**

**A. Municipal Powers**

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**B. California Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Contractor covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, State of California for any dispute, claim or matter arising out of or related hereto.

**C. Integrated Agreement**

This Agreement including Attachments and/or Exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and Contractor.

**D. Severability**

The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal.

**E. Waiver**

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

**F. Headings**

All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**G. Counterparts**

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

IN WITNESS WHEREOF, this Agreement executed by City of San Diego acting by and through the Mayor or designee and by Contractor pursuant to Resolution No. R-306954.

THE CITY OF SAN DIEGO

COLLEGE AREA ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_ day of \_\_\_\_\_, 2011.

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_

Adam R. Wander  
Deputy City Attorney