

COPY

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION,
AND CONTRACTOR
FOR THE MANAGEMENT OF THE
COLLEGE AREA BUSINESS IMPROVEMENT DISTRICT
COMMENCING FISCAL YEAR 2014**

This Agreement ("Agreement") is made between The City of San Diego, a municipal corporation ("City"), and College Area Economic Development Corporation ("Contractor"), a California Corporation, hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, Ordinance No. O-18539 established and defined a parking and business improvement area, known as the College Area Business Improvement District ("District"); and

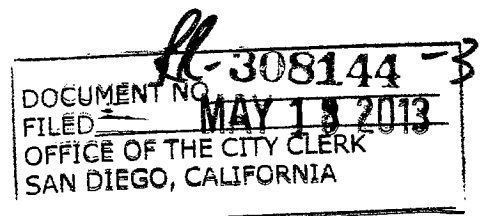
WHEREAS, pursuant to Ordinance No O-18539, the City collects a special charge ("Assessment") from business owners in the District to be used for the promotion of, and improvement to, the District; and

WHEREAS, pursuant to Council Policy 900-17, City Council shall designate an entity to carry out the improvement program; and

WHEREAS, subject to annual approval by the City Council of the District's annual Budget Report specifying the authorized activities and improvements to be undertaken with the Assessments for the purpose of making general improvements in the District and solving problems of the District, including the:

- a) acquisition, construction, and/or maintenance of parking facilities for the benefit of the District;
- b) decoration of public places in the District;
- c) promotion of public events in public places in the District;
- d) furnishing of music in public places in the District;
- e) promotion of business activities in the District; and
- f) any and all other purposes authorized by law, the ordinance establishing the District, and/or the City Council.

WHEREAS, Contractor has experience in small business affairs within the District and local expertise, is representative of businesses, and is qualified and willing to provide the services described herein; and



WHEREAS, the services to be performed by Contractor contribute to the economic and promotional well-being of the District;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

EFFECTIVE DATE; TERM OF AGREEMENT

- 1.1 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, 2013 and continue for five years until June 30, 2018 (“Term”), unless terminated earlier in accordance with the terms of this Agreement.

ARTICLE II

CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 2.1 City’s Economic Development Division (“Division”) is the contract administrator for this Agreement. The City hereby designates the Office of Small Business of the Division as City’s designated representative (“City Representative”) for the purposes of this Agreement.
- 2.2 The City Representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor’s performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City Representative in performing Contractor’s obligations and duties under this Agreement.
- 2.3 City, at its sole discretion, may change its City Representative at any time and shall inform Contractor of any such change within ten calendar days of the date of such change.

ARTICLE III

INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 3.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall

mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

- 3.2 Because this Agreement is entered into by the City in reliance upon Contractor's involvement and expertise in small business affairs within the District, and because Contractor is representative of businesses within the District, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, and any such assignment shall be ineffective, null, and void.
- 3.3 Contractor hereby designates its President as the primary and Executive Director as the secondary designated representatives ("Contractor Representatives") for the purposes of this Agreement. In the event Contractor changes its Contractor Representatives for the purposes of this Agreement, Contractor shall notify the City of the new Contractor Representatives within ten calendar days of the date of such change.

ARTICLE IV

OBLIGATIONS OF CONTRACTOR

4.1 **General Obligations.**

- 4.1.1 Contractor shall perform all services necessary for the proper management of the District. Contractor shall perform all Program-related services in a professional and prudent manner and in accordance with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, and the Budget Report. "Program" is the improvements and activities within the District as described in the Budget Report, and all of Contractor's obligations described in this Agreement.
- 4.1.2 The total payments provided each fiscal year to Contractor under this Agreement shall not, under any circumstances, exceed the amount set forth in the District's budget for that respective fiscal year, as described in the Budget Report approved by City Council. Contractor shall only use District assessment funds for the Program as authorized and approved by City Council in the Budget Report for each fiscal year.
- 4.1.3 Contractor shall be responsible for subcontracting for any support services required under this Agreement, and for paying for all such direct out-of-pocket expenses as may be necessary for the timely completion of the Program.

4.1.4 Contractor shall conduct all hiring of staff using an open, competitive process. This process shall include the posting of a Request for Qualifications in at least one publication of general circulation, which may be either electronic or print media. Contractor shall keep a record of such noticing and subsequent actions approving the hiring of staff.

4.2 **Specific Obligations.**

4.2.1 Contractor shall annually:

- a) establish objectives for evaluating and strengthening the existing businesses within the District, and explore methods of attracting new businesses into the District;
- b) develop a general promotional strategy, tailored to the businesses within the District - any special events are subject to the City's general regulations and requirements, unless an alternative written agreement is executed between the City's Special Events Office and Contractor;
- c) establish a liaison with agencies conducting business revitalization activities, and explore means of supporting public improvement projects within the District;
- d) be responsible for managing any banner district that overlaps the District, in accordance with the City's Development Services Department policies, and any other applicable rules and regulations; and
- e) distribute a newsletter (in electronic and/or print media format) to every business assessed in the District at least once every three months, which shall include, among other things, a directory of Contractor's current Board Members.

4.2.2 Contractor shall maintain its active California non-profit corporate status and the membership shall include all businesses within the District holding current business tax certificates that have also paid the appropriate BID assessment.

4.2.3 Contractor shall elect its Board at an annual meeting of the membership called for that purpose. The election may be accomplished through a mailed ballot prior to the annual meeting with the results of the mailed ballot election being announced and confirmed at the annual meeting. Notice of the meeting shall be provided to all eligible member businesses. Ballots or other election material shall be provided, by mail or at the meeting as applicable, to all eligible member businesses.

- 4.2.4 Contractor shall hold an annual meeting in compliance with the noticing requirements herein. In addition, Contractor shall send a notice of the meeting to all business owners within the District, informing them of Contractor's functions, and affording them an opportunity to express their desires and concerns to Contractor.
- 4.2.5 Contractor shall appoint a representative and an alternate representative, at least one of whom shall attend each monthly meeting of the San Diego Business Improvement District Council.
- 4.2.6 Contractor shall provide, among other things, each of the following submittals to City:
- a) **Monthly Reconciliation Report.** This report shall comply with the requirements of Exhibit B1 and include an accounting of the District assessment funds disbursed to Contractor. The Reconciliation Report shall be submitted to the City on or before the 15th day of the second month following the disbursement of said funds.
 - b) **Annual Budget Report:**
 - 1. This report ("Budget Report") shall include an outline of the proposed improvements and activities within the District, as well as the estimated cost, by category, of providing those improvements and activities for Fiscal Year ("FY") 2015 and for each subsequent fiscal year through the Term of this Agreement.
 - 2. The report shall also identify the estimated amount of any surplus or deficit in District assessment funds to be carried over from FY 2014 and for each subsequent fiscal year through the Term of this Agreement, and any anticipated contributions during FY 2015 and for each subsequent fiscal year through the Term of this Agreement, to be collected from sources other than the District assessment funds levied during the respective fiscal year.
 - 3. The report shall be delivered to the City on or before March 1, annually for the coming fiscal year, in time for the annual Business Improvement District ("BID") appropriation process for that coming fiscal year by the City Council.
 - c) **Annual Report.** Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for FY 2014 and for each subsequent fiscal year through the Term of this Agreement. The report shall be delivered to the City on or before November 30 annually, and distributed to every business assessed in the District.

- 4.2.7 Contractor shall post on any District website: all regular meeting agendas; approved meeting minutes; Contractor's bylaws; any annual audits or financial disclosures pursuant to Article X, the Annual Report; and contracts awarded in accordance with Exhibit C (using any BID assessments) which are \$5,000 or more, including a notation of the number of bidders for such contracts in the top right hand corner of the contract posted.

ARTICLE V

ADVANCES; DISBURSEMENTS; ADJUSTMENTS; OTHER REVENUE

5.1 Advances.

- 5.1.1 In the event that there are carry forward Assessment funds from the previous fiscal year in the District's Fund at the City, then upon written request from Contractor, the City may advance District Assessment funds to Contractor for up to 100% of a documented expense to implement any activity or improvement specified within the approved Budget Report. Any advance will be based on available cash at the time of the request, subject to certification of funds availability by the City Comptroller.
- 5.1.2 Contractor shall submit a Reconciliation Report accounting for the use of the advanced District Assessment funds, as described in Exhibit B1 within 60 days of the receipt of the advance. If the Reconciliation Report is not submitted within this timeframe then the advanced funds must be returned to the City in the form of a check marked payable to the City Treasurer, noting the District's name in the memo line, and City staff will deposit the check back into the District Fund. If neither the Reconciliation Report nor the repayment check is received by the City then the monthly disbursements may be suspended pending receipt of the required Reconciliation Report or repayment check. In the case of an extraordinary event or circumstance beyond the control of the Parties, such as an act of God, then City may, at its sole discretion, establish a new timeline and/or repayment process.
- 5.1.3 The City may advance Small Business Enhancement Program (SBEP) funds to Contractor, in full or in part, from those SBEP funds allocated to the Business Improvement District Council (BID Council), in accordance with City Council Policy 900-15. Such advance of SBEP funds is subject to each of the following:
- a) review and approval of the advance by the BID Council for BID management activities;

- b) receipt by the City of a signed agreement between Contractor and the BID Council, detailing the amount, timing, permitted use of such funds, and any other language required by this Agreement;
- c) authorization by Contractor for the City to audit the use of any advanced funds; and
- d) receipt by the City of a full accounting by Contractor of any BID management SBEP funds previously advanced to Contractor.

5.2 **Disbursements.** City will disburse District assessment funds to Contractor on a monthly basis and with a payment term of Net 20. On the last working day of each month, the City will determine the revenue posted during the month from assessments and penalties in the District Fund and will distribute that amount of funds to Contractor on or before the twenty-fifth day of the following month pursuant to the procedures described in Exhibit B1.

5.3 **Reconciliation Reports.**

- 5.3.1 Contractor shall submit to the City a Reconciliation Report accounting for the use of the District assessment funds, as described in Exhibit B1, on or before the fifteenth day of the second month following the disbursement of those District assessment funds. Failure to timely submit a Reconciliation Report may result in, among other things, cessation of future disbursements until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement.
- 5.3.2 District assessment funds may only be used for District Program-related activities as authorized and approved by City Council in the Budget Report. Any expenditure that is not consistent with the Budget Report, or is not supported with proper documentation described herein and in Exhibit B1, shall be considered an ineligible expenditure and may result in, among other things, cessation of future disbursements, reduction of future disbursements, or termination of this Agreement. Nothing in this section shall 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.
- 5.3.3 Contractor shall not use District assessment funds in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed, or should have known of such debarment, suspension, or ineligibility.

- 5.3.4 In the event that Contractor is holding carry forward Assessment funds at the end of the preceding fiscal year, then Contractor may use such funds only for District Program-related activities as authorized and approved by City Council in the Budget Report. Contractor shall submit to the City a Reconciliation Report accounting for the use of these carry forward Assessment Funds held by Contractor, as described in Exhibit B1, by March 31. If the documentation is not submitted within this timeframe then the carry forward assessments must be returned to the City in the form of a check marked payable to the City Treasurer and noting the District's name in the memo line and City staff will deposit the check back into the District Fund. If neither the Reconciliation Report nor the repayment check is received by the City then the monthly disbursements may be suspended pending receipt of the required Reconciliation Report or repayment check.
- 5.4 **City Fees.** Pursuant to Council Policy 900-15 (SBEP), Contractor may request reimbursement for a portion of City fees incurred within the contract period in the course of implementing the activities and improvements specified in the Budget Report. Contractor shall complete and submit a form, as specified by the City, along with proof of payment by Contractor of the eligible expense(s), and a copy of each applicable permit. The total amount of funding available for this purpose for the Contractor shall be determined by the BID Council and provided in writing to the City along with the percentage of expenses which may be reimbursed; however, this percentage may not exceed 90% of the eligible City fees. If approved by City Council, these requests will be made to, and payments will be disbursed by, the BID Council.
- 5.5 **Adjustments Between Cost Categories.** Any Contractor request for adjustments between cost categories shall be submitted immediately to the City in writing and shall include a justification as to why the adjustment is necessary for implementing the City Council-approved Program. Cost categories are described in the Budget Report. The City may approve reasonable adjustments (where the sum of the adjustments does not exceed 20% of the overall District budget for the fiscal year) between cost categories, as limited by the total annual appropriation for the Program. Contractor shall not expend any additional funds in any affected cost category unless Contractor has first received written City approval of the adjustments. No Contractor request for adjustments between cost categories shall be approved after April 30 of each fiscal year.
- 5.6 **Adjustments Within Cost Categories.** Any adjustments to line items within cost categories as described in the detailed budget submitted as part of the Budget Report, which amount to 20% or less of any line item expense shall be provided to the City in writing for City records. Any adjustment greater than 20% shall be submitted in writing and shall include a justification as to why the adjustment is necessary for implementing the City Council-approved Program.

5.7 **Other Revenue.** In the event Contractor, in its capacity as the manager of the District, collects District assessment funds directly from classes of businesses not required by the City to obtain a Business Tax Certificate, Contractor shall separately account for such assessment funds and shall only use such funds to pay for Contractor's performance of its obligations and/or duties under this Agreement. Contractor shall, within thirty calendar days of any written request by the City, provide the City an accounting of Contractor's collection and expenditure of any such assessment funds.

5.8 **Reimbursement Requests and City Processing.**

5.8.1 In the event that Contractor has carry-forward Assessment funds from the previous fiscal year, Contractor may submit to the City, on or before April 30 of the current fiscal year, a reimbursement request for implementing an activity or improvement specified within the approved Budget Report. The request, along with all supporting receipts, invoices, checks, payroll statements, bank statements, and any other records for services performed, must be submitted in accordance with the procedures described in Exhibit B2, "BID Reimbursement Request Procedures" Each expenditure for reimbursement must show as cleared on the submitted bank statements. The City will not consider bank statements, alone as sufficient records for services performed, except under extraordinary circumstances.

5.8.2 All requests for reimbursement shall be accompanied by the following statement: "[Contractor's Name] hereby certifies that all staff time expended and reimbursements requested are for services performed in accordance with the Agreement between The City of San Diego and [Contractor's Name] for the management of the [BID Name] in Fiscal Year [Applicable Fiscal Year]". Reimbursement requests shall be signed by an officer of Contractor, not the Executive Director.

5.8.3 Contractor shall not request reimbursement for any expenditure that has been or may be properly charged to a monthly Disbursement provided under Section 5.2.

5.8.4 Contractor shall not request reimbursement for any expenditure that has been or may be properly charged to a funding source other than District assessment funds.

5.8.5 Contractor shall not request reimbursement for any expenditure that has been or may be properly charged to a funding agency other than the City.

5.8.6 The City shall process, with NET20 payment terms, the Contractor's reimbursement request for eligible expenses upon receipt of proper evidence from Contractor subject to certification of funds availability by the City Comptroller.

ARTICLE VI

SUSPENSION AND TERMINATION

6.1 Suspension or Disallowance of Payments.

6.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

6.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

6.2 Termination for Convenience.

6.2.1 Notwithstanding the Term of this Agreement, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.

6.2.2 In the event this Agreement is terminated pursuant to Section 6.2.1, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, no later than the termination date of this Agreement.

6.3 Termination for Curable Default.

6.3.1 Except as provided in Section 6.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.

6.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.

6.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, upon the termination date of this Agreement.

6.4 **Termination for Incurable Default.**

6.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:

- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
- b) Contractor, or any of its officers or directors, engages in conduct that results in Contractor, or any of its officers or directors, being convicted of a felony that materially and adversely affects Contractor's performance of its obligations under this Agreement;
- c) Contractor misappropriates funds;
- d) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- e) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Program that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

6.4.2 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, upon the termination date of this Agreement.

6.5 **Continuing Responsibilities.** In the event this Agreement is terminated:

- a) Contractor shall, until the termination date of this Agreement, continue to manage the District, so that there is no interruption in or loss of service to the business owners within the District. Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination.
- b) The City will, upon the effective date of termination, assume the responsibility for the management of the District.
- c) Contractor, by accepting payment for completion, discharges the City of all City's payment obligations and liabilities under this Agreement.

6.6 **Rights and Remedies.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article 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.

6.7 **No Subsequent Agreement.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor for the management of the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, upon the expiration date of this Agreement; and
- b) the Annual Report, in accordance with Contractor's specific obligations enumerated herein.

ARTICLE VII

INDEMNIFICATION

7.1 **Indemnification and Hold Harmless Agreement.** Contractor agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to

any person or property, including injury to Contractor's Subcontractors, agents, officers, employees, or volunteers which arise from, or are connected with, or are caused or claimed to be caused by the acts or omissions of Contractor, its Subcontractors, agents, officers, employees, or volunteers, and agrees to be responsible for all expenses of investigating and defending against same; provided, that Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents, officers, or employees. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.

- 7.2 **Enforcement Costs.** Contractor shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article or any matter in this Agreement.

ARTICLE XIII

INSURANCE

- 8.1 **Insurance.** Contractor shall not begin any work under Agreement until it has: (a) provided to the City all insurance certificates reflecting evidence of all insurance required in below; however, the City reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. Contractor's liabilities, 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 herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City. The Contractor shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.
- 8.2 **Types of Insurance.** At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

Commercial General Liability. Commercial General Liability (CGL). 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 or property damage in the amount of \$ 1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

Commercial Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

Workers' Compensation. For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

8.3 **Deductibles.** All deductibles on any policy shall be the responsibility of the Contractor and shall be disclosed to the City at the time the evidence of insurance is provided.

8.4 **Acceptability of Insurers.** Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner 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 included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

8.5 **Required Endorsements.** The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

Commercial General Liability Insurance Endorsements:

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects

operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Contractor'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 and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Contractor.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor'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 and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- 8.6 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.7 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by the City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.
- 8.8 **Additional Insurance.** The Contractor may obtain additional insurance not required by this Agreement.

- 8.9 **Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE IX

DATA AND RECORDS

- 9.1 **General.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Program (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records pertaining to all matters covered in this Agreement) during the term of this Agreement.
- 9.2 **Accounting Records.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices (“GAAP”) in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Program-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 9.3 **Inspection and Photocopying.** At any time during normal business hours and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Program data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties in connection with the Program. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 9.4 **Storage Period.** Contractor shall store, and require its Subcontractors to store, all Program data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Project data and records.

- 9.5 **Original Documents.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by City, the originals of all such data and records to City. Contractor may retain copies of all data and records delivered to City.
- 9.6 **Ownership of Documents.** Once Contractor has received any payment from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of City. City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Project, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE X

AUDITS; FINANCIAL DISCLOSURES; OTHER DISCLOSURES

- 10.1 **Audits.** Contractor shall ensure that annual single audits and financial statement audits are completed by a Certified Public Accountant. Individual projects funded by the City must be clearly identified in the audit reports, as well as the dollar amount allocated to the Program by City.
- 10.1.1 If, during any fiscal year, Contractor expends \$35,000 or more of District assessment funds and other City funds, combined, then Contractor shall have a financial statement audit of those District assessment funds and other City funds. City funds include, but are not limited to, SBEP funds received through the BID Council. 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"). This audit report shall include the following statements:
- a) a Statement of expenditure of City funds, by program, identified in the same expenditure categories as set forth in the Budget Report, and compared with the corresponding budgeted amounts;
 - b) a statement of revenues and expenditures, including a balance sheet of all funds received by Contractor; and
 - c) a statement of compliance, setting forth Contractor's compliance with the terms and conditions of this Agreement.

Contractor shall provide the City a copy of the financial statement audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted in writing by City, upon written request by Contractor.

10.1.2 If Contractor is subject to an audit from a source other than City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of such third party audit(s).

10.2 **Financial Disclosures.** If, during any fiscal year, Contractor expends less than \$35,000 of District assessment funds and other City funds (as defined above), combined, then Contractor shall provide true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year and detailing all funds received from the City during that fiscal year, employing the same statements described in 10.1.2 above. Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted in writing by City, upon written request by Contractor.

10.3 **Accounting of CDBG Funds.** If Contractor has a separate agreement with the City for the use of Community Development Block Grant ("CDBG") funds, then the audit provisions of that agreement shall control for the accounting of CDBG funds.

ARTICLE XI

CONFLICTS OF INTEREST

11.1 Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of the City related to public contracts and procurement practices to the extent applicable.

11.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.

11.3 Contractor shall establish, and make known to its agents and employees, 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, and/or other relationships.

11.4 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.

- 11.5 If Contractor violates any conflict of interest law, or any of the provisions of this Article, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies available in equity or at law. 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 XII

SUBCONTRACTORS

12.1 Subcontractors List and Subcontracts.

12.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:

- a) a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement, which the City will forward to EOCP; and
- b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

12.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:

- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
- b) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services, which the City will forward to EOCP.

12.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

12.2 **Required Language for Subcontracts.**

12.2.1 Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language which requires Subcontractors to at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations.

12.2.2 Subcontractor shall obtain all insurance coverage required of Contractor in this Agreement. Subcontractor shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with this Agreement. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

12.2.3 If the City is made a party to any judicial or administrative proceeding to resolve the dispute between Contractor and Subcontractor, Contractor shall defend and indemnify the City as described herein.

12.3 **Contract Activity Report.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

12.4 **Prohibition on Use of Certain Subcontractors.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XIII

PROMOTIONAL MATERIALS

13.1 **Required Language.** Contractor shall include the following language on all promotional brochures, newsletters, advertising, Internet web sites, fact sheets, news releases, and other promotional materials: "Partially funded by The City of San Diego's Small Business Enhancement Program."

- 13.2 **Product Endorsements.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.
- 13.3 **Submittals to the City.** Contractor shall submit a final copy of any and all promotional materials to the following:

City Contract Representative
City of San Diego
Business Outreach
1200 Third Avenue, Suite 1400
San Diego, CA 92101

ARTICLE XIV

CITY POLICY PROVISIONS

- 14.1 **Drug-Free Workplace.** The Contractor agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify that it shall provide a drug-free workplace by delivering to City a "Contractor Certification for a Drug-Free Workplace" form.
- 14.2 **ADA Certification.** The Contractor hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.
- 14.3 **Non-Discrimination Requirements.**
- 14.3.1 **Compliance with the City's Equal Opportunity Contracting Program.** The Contractor shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Contractor liable for any discriminatory practice of its Subcontractors.
- 14.3.2 **Non-Discrimination Ordinance.** The 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. The Contractor shall provide equal opportunity for

Subcontractors to participate in subcontracting opportunities. The 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, and other sanctions. This language shall be in contracts between the Contractor and any Subcontractors, vendors and suppliers.

- 14.3.3 **Compliance Investigations.** Upon the City's request, the 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 the 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. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517]. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.
- 14.4 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code ("Code") sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.
- 14.5 **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, the City's "Operating Manual for Economic Development Programs – Fiscal Year 2011 Update" (Operating Manual) including without limitation those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. No change to the procedures set forth in the Operating Manual shall be effective without City's prior written consent.

ARTICLE XV

GENERAL PROVISIONS

- 15.1 **Compliance with Law.** The Contractor shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Contractor shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 15.2 **No Political Activity.** Contractor shall not use and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term “political activity” shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 15.3 **Open Meetings and Brown Act Compliance.** The Contractor shall comply with the Ralph M. Brown Act, California Government Code section 54950 et. seq. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.
- 15.4 **California Public Records Act.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250-6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 15.5 **Confidentiality of Information.** Notwithstanding any other law or provision in this Agreement, all information provided by the City to Contractor in connection with this Agreement, including, but not limited to, all business tax information and rental tax information, is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City.
- 15.6 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to City:

City of San Diego
Attn: Economic Development
1200 Third Avenue, Suite 1400
San Diego, CA 92101

If to contractor: As described in Exhibit A.

Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service.

- 15.7 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 15.8 **Unavoidable Delay.** If the performance of any act required of the City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or the City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 15.9 **Jurisdiction, Venue, and Attorney Fees.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs, in addition to any other award made in such suit or proceeding.
- 15.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 15.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

- 15.12 **Entire Understanding.** This Agreement represents the entire understanding of the City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.
- 15.13 **Exhibits and Attachments Incorporated.** All exhibits and attachments referenced in this Agreement are incorporated into the Agreement by this reference.
- 15.14 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 15.15 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement.
- 15.16 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 15.17 **Waiver.** City's failure to insist upon the strict performance of any of Contractor's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. City's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the City to constitute a valid and binding waiver. City's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. City's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but the City may at any and all times require the cure of the default.
- 15.18 **Survival.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive completion and acceptance of the Services and termination or completion of the Agreement.

- 15.19 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the exhibits or attachments, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits or attachments, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 15.20 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 15.21 **Consents, Approvals.** Neither the City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.
- 15.22 **City's Consent, Discretion.** Whenever required under this Contract, City's consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his designee, unless otherwise expressly provided. City's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

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15.23 **Authority.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide the City with evidence, satisfactory to the City that such authority is valid, and that such entity is a valid, qualified corporation, in good standing and qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: 4/18/13

COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION

BY: Paul V. Russo
Name: Paul V. Russo
Title: President

Date: 6/17/13

THE CITY OF SAN DIEGO, a California municipal corporation

By: Pam Glover
Pam Glover
Procurement Specialist
Purchasing & Contracting

APPROVED AS TO FORM AND LEGALITY:

Date: 6/24/13

JAN I. GOLDSMITH, City Attorney
BY: [Signature]
Name: Adam R. Wander
Title: Deputy City Attorney

f. 308144

EXHIBIT A

ADVANCE PAYMENT INFORMATION

I. ADVANCE PAYMENTS

BID Assessment Advances: FY2013 or earlier BID advances are to be repaid or accounted for through submission of expenses incurred within FY 2013. Any advances to the Corporation from BID Assessments made during FY2014 or subsequent fiscal years are subject to repayment or write-off via submission of appropriate documentation for expenses incurred within the same fiscal year as specified in Section 5.1.2.

BID Disbursements from FY2013 Not Expended in FY2013: Any funds disbursed in FY2013 to Contractor which are not expended by June 30, 2013 may only be used to implement an activity or improvement specified within the approved Budget Report in FY2014 and such expenditure must be documented and included with the monthly reconciliation reports submitted to the City in FY2014. The process will be same for each subsequent fiscal year through the term of the agreement.

Small Business Enhancement Program Advances: SBEP advances provided in any fiscal year are to be repaid or accounted for through submission of expenses incurred within that fiscal year with documentation to be submitted before June 30 of the fiscal year.

II. CORPORATION ADDRESS FOR NOTICES

College Area Economic Development Corporation
4704 College Avenue
San Diego, CA 92115

III. SAN DIEGO BUSINESS IMPROVEMENT DISTRICT COUNCIL

Representative: Jennifer Finnegan
Alternate: Paul Russo

IV. OTHER RESPONSIBILITIES

No special responsibilities are included in this Agreement.

EXHIBIT B1

BID DISBURSEMENTS AND BID ASSESSMENT FUNDS RECONCILIATION PROCEDURES

Disbursements in advance of City receipt of required documentation will be provided monthly based on the revenue posted into the District account during that month as determined by City staff at month end.

- On the last working day of each month, City staff shall determine the revenue posted during the month from assessments and penalties, which is to be disbursed to Contractor.
- OSB staff will then submit a payment request in SAP for that amount within two working days and include a copy of the “invoice” document which details the relevant approved resolution and agreement authorizing the monthly disbursement in advance of City staff receiving documentation as to the actual expenditures. Attached to the invoice document shall be a document indicating how the amount for disbursement was derived.
- Information as to the amount to be disbursed shall be provided to Contractor within 4 working days of the month start.
- City Comptroller’s staff will review the request and, if appropriate, release the payment in accordance with the Vendor Payment Term of NET20.

An accounting of the use of the assessment funds shall be submitted to the City on or before the fifteenth day of the second month following the disbursement.

For example, the September revenue posted will be disbursed by the City on or before October 25, as provided for above, and the Reconciliation Report for the use of those funds shall be submitted by the Contractor on or before December 15.

Only BID-related activity expenses as approved by City Council in the annual Budget Report may be submitted to document the use of the assessment funds (and any penalties and interest) disbursed in advance of said documentation. Failure to submit a report or reports within 10 days of the due date will result in advance payments being halted until overdue reports are received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement.

The BID accounting system (default software is Quickbooks “QB”) will need to be set up into Classes or equivalent to generate the correct reports. The BID Council staff or hired contractor may assist the Contractor staff in verifying that the set up is correct and may provide assistance to Contractor staff, as needed, to ensure conformance to the requirements of this Agreement. Classes should include the following (as applicable):

- BID
- SBEP Management Grant
- MAD
- Community Parking District
- City Fees and Offset Request (Month that invoice is received and paid)

- EDTS (submit monthly and will be reimbursed quarterly)
- CDBG
- Creative Communities San Diego (Arts and Culture funding)
- Council District Awards (TOT)
- County Grant Funding
- Other (fundraising)

The required reports and documents to be submitted with each monthly Reconciliation Report are:

- Cover letter/signed form for each funding source associated with OSB (BID and SBEP Mgmt Grant should be on one letter/form) indicating the amount of eligible BID expenses, the amount of the expenses to be applied against any outstanding SBEP grant advance, and any disbursement accrued for a future purpose.
- Summary Profit and Loss Report* for ALL classes by class for the month.
- Cash Disbursement Report* for all transactions in the month.
- Custom Journal Report* for all transactions in the month indicating the split of each expenditure between the various funding sources (classes).
- Transaction Detail by Account Report* for each City Funding source.
- Banks Statement(s) – include all pages.
- Bank Reconciliation Report.
- Cash Deposit Report* of all checks deposited (including all funds received from the City).
- Monthly Activity Report based on the Council-approved Budget Report of proposed activities and improvements for the fiscal year.
- One copy of the invoice and checks. Only those Invoices and Checks that pertain to City funding sources are to be submitted. These documents shall be provided in the same order as the list on the Custom Journal Report.
- A copy of the check and invoice or receipt detailing the services/products for each expense must be submitted. All invoices shall itemize the eligible expenditures and 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. Statements alone are not acceptable, but may be submitted in addition to the invoice or receipt.
- When past due expenses are being submitted then the prior invoice(s) reflecting the amount owed must also be included since only fully documented expenses may be accepted.
- Checks and invoices are not to be stapled together.
- Include payroll statements that detail all withholdings and taxes if salaries are included in the Council-approved Budget Report.

- Proof of payments to State and Federal agencies are required if the taxes/fringe benefits are to be considered as eligible expenses.
- For refreshments for public board/committee/taskforce meetings, submit an agenda and the sign-in sheet for each meeting.
- For mileage, include a log that has the starting and ending mileage and the destination for each trip.
- Please note that late fees, finance charges (for late payments), citations, other penalties, nonsufficient fund bank fees, gifts, donations, gift cards, and alcohol purchases are deemed as ineligible expenses.
- One copy of the Board Meeting Minutes and Attendance sheets.

**The BID Council may help set these up as memorized reports upon request.*

Once the payment request is authorized by the City Comptroller's Office and the NET20 days have passed from the date of the "invoice" document, payment will be made in one of the following ways depending on whether the Contractor has registered for the ACH payment program:

- Checks are cut daily by the City Comptroller's Office and mailed out via U.S. Postal Service the next working day and may take up to four days to be delivered; or
- ACH payments are generally deposited into the receiving bank account the next working day (in the morning).

EXHIBIT B2

BID REIMBURSEMENTS

Assessments may also be provided on a reimbursement basis.

Reimbursement requests should include all documents per the check list below and a brief report on the implemented activities or improvements. :

Expenses related to activities or improvements per the approved Budget Report are eligible for reimbursement, provided sufficient documentation is supplied unless the expense itself is not an eligible type..

Reimbursement Procedures and Checklist

The package should be assembled as follows:

PACKAGE CHECK LIST		
Document	Source	Included
Cover Letter	Template	
P&L Summary by class (for all classes)	QB	
Cash Disbursement Report for all checks	QB	
Journal Report (Custom)	QB	
Bank Statement(s)	BID office	
Bank Reconciliation(s) report	QB	
Cash Deposit Report	QB	
ONE copy of Back Up for each for each of the expenses	Check/Invoice	
IN ORDER OF THE JOURNAL REPORT		
Activity Report	Template	
Transaction Detail Reports for each City Funding Source (with City G/L Codes for MADs)	QB	
Minutes	BID office	
Attendance Sheets	BID office	

Cover letter indicating how much is requested for reimbursement and how much is being applied against any outstanding agreement advance. The letter must be signed by an authorized signer of the Corporation but not the Executive Director

Behind each cover letter submit a **Summary P&L** showing funding by ALL classes (all of the above included).

Generate a **Cash Disbursement Report** for all transactions in the month. Generate a **Journal Report** for all transactions in the month. Generate a **Transaction Detail by Account** for each City Funding source. **Banks Statements** – include all pages

Bank Reconciliation Reports - These should be kept with the Bank Statements when the Reconciliation is done and the detailed QB report is printed. Copy both the bank statements and reconciliation reports for inclusion into the package.

Cash Deposit Report – QB –Activity Report highlighting the activity or improvement implemented.

Transaction Detail Report

ONE Copy of the Invoice and Checks These are only Invoices/Checks that are being claimed. Back Up to be provided in the same order as the list on the Journal Report, but **ONLY** copies of the checks and back up documentation being claimed should be submitted.

- Attach a copy of the check and invoice or receipt detailing the services/products for each expense. All invoices shall itemize the expenditures for which payment is requested and 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. Statements alone are not acceptable, but may be submitted in addition to the invoice or receipt.
- The City Comptroller's Office will only reimburse for current charges. When past due expenses are being requested for reimbursement, please submit the prior invoice reflecting the amount owed.
- Please do not staple together each of the checks to each of the corresponding invoices.
- Include payroll statements that detail all withholdings and taxes if salaries are included in your approved budget.
- Proof of payments to State and Federal agencies are required if the taxes/fringe benefits are to be reimbursed.
- For reimbursement of refreshments or meal expenses for board or other public meetings, please submit an agenda and the sign-in sheet for each meeting (mandatory).
- For mileage, please include a log that has the starting and ending mileage and the destination for each trip.
- Please note that late fees, finance charges, citations, other penalties, nonsufficient fund bank fees, gift cards, and alcohol purchases are deemed as ineligible for reimbursement.

EXHIBIT C

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO FOR ADMINISTRATION OF A BUSINESS IMPROVEMENT DISTRICT

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to administer programs, and which receive funding from or through the City.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City for administration of a Business Improvement District shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to the City's procurement of such goods and services.

When a *contract* provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Nonprofit Corporation may award the *contract* but shall seek competitive prices either orally or in writing.

When a *contract* provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Nonprofit Corporation may award the *contract* but shall solicit written price quotations from at least five potential sources.

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Nonprofit Corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.

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