

ORIGINAL

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

This First Amendment (First Amendment) is entered into between the City of San Diego, a California municipal corporation (City), and COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION, a California non-profit, public benefit corporation (Contractor), hereinafter collectively referred to as the "Parties," for the management of the College Area Business Improvement District (District).

RECITALS

WHEREAS, pursuant to Resolution No. R-308144 the Parties entered into an agreement (Agreement) for Contractor to manage and administer the District; and

WHEREAS, this First Amendment is necessary to allow for a new process for determining and disbursing Small Business Enhancement Program funds to Contractor and to clarify procurement procedures following changes to Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code;

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

1. The effective date of this First Amendment is July 1, 2015.
2. Section 4.2.5 of the Agreement shall be deleted in its entirety and replaced with "4.2.5 has been intentionally omitted."
3. Section 4.2.6 of the Agreement shall be deleted in its entirety and replaced with the following:

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 for a month shall be submitted to the City on or before the 25th day of the following month.
- b) **Annual Budget Report:**

1. Annually, the draft Budget Report for the coming fiscal year shall be delivered to the City on or before February 1 and the final Budget Report shall be delivered to the City on or before the first business day in March for the annual Business Improvement District (“BID”) appropriation process, unless City provides an alternate schedule due to its legislative calendar.
 2. The Budget Report shall include budgeted amounts and narrative and shall be formatted using the template provided by City.
 3. This 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 the coming fiscal year.
 4. The Budget Report shall also identify the estimated amount of any surplus or deficit in District assessment funds (anticipated to be held by City, and separately, any unreconciled assessment funds anticipated to be held by Contractor) to be carried over from the then current fiscal year into the coming fiscal year, and any anticipated contributions for the coming fiscal year, to be collected from sources other than the District assessment funds levied for that fiscal year.
- c) **Annual Report.** Annually, Contractor shall prepare an Annual Report, summarizing Contractor’s goals, accomplishments, revenue and expenditures for the most recently completed fiscal year. The report shall be delivered to the City and distributed by mail to every business assessed in the District within 150 days of fiscal year end.
4. Section 4.2.7 of the Agreement shall be deleted in its entirety and replaced with the following:
 - 4.2.7 Contractor shall post on any District website: all regular meeting agendas (Board and Committee); 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. Posted items shall be maintained on the website for a minimum of five (5) years.
 5. Section 5.1.3 of the Agreement shall be deleted in its entirety and replaced with the following:
 - 5.1.3 The City may advance Small Business Enhancement Program (SBEP) funds to Contractor, in full or in part. The amount to be advanced shall be determined by the City’s Economic Development staff in consultation with a

majority of BID contractors. Such advance, if any, and use of SBEP funds is subject to each of the following:

- a) use of SBEP Management Grant funding is limited to accounting services and staffing such that \$3,000 is allocated for accounting services to assist with the proper keeping of records and submission of documentation required by this Agreement; and the balance of the grant is allocated for staffing expenses such as payroll and related taxes and benefits;
- b) authorization by Contractor for the City to audit the use of any advanced SBEP funds; and
- c) receipt by the City of a full accounting by Contractor of any BID management SBEP funds previously advanced to Contractor.

6. Section 5.4 of the Agreement shall be deleted in its entirety and replaced with the following:

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 City expense and, if applicable, submit a copy of the City-issued permit. The maximum amount that may be reimbursed shall be determined by the City's Economic Development Staff in consultation with a majority of BID contractors, however, this amount may not exceed 90% of the eligible City fees.

7. Section 5.7 of the Agreement shall be deleted in its entirety and replaced with the following:

5.7 **Other Revenue/Non-Public Funds.**

5.7.1 **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.

5.7.2 **Non-Public Funds.** In the event Contractor collects any funds other than District assessment funds ("Non-Public Funds"), such Non-Public Funds may be utilized or obligated by Contractor for activities and/or improvements and shall not be subject to the provisions in this Agreement, with the exception of Sections 12.2.1 and 15.1, so long as

Contractor does not utilize or obligate any District assessment funds towards:

- a) any portion of the proposed activity or improvement to which Contractor proposes the use of Non-Public Funds; and
- b) any staff time or resources associated with the proposed activity or improvement to which Contractor proposes the use of Non-Public Funds, including but not limited to facilitating committee or board discussions, implementing the proposed activity or improvement, soliciting for goods or services necessary for implementation, and accounting or reporting on the proposed activity or improvement. Notwithstanding the foregoing sentence, Contractor's use of District assessment funds for purposes of generating reports pertaining to Non-Public Funds in accordance with the requirements set forth in Exhibits B1 and B2 of this Agreement shall not, by itself, subject such Non-Public Funds to the provisions in this Agreement.

8. Section 12.2.1 of the Agreement is deleted in its entirety and replaced with the following:

12.2.1 Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language requiring 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. Contractor's and Subcontractors' obligations to comply with all applicable law in performing this Agreement include, but are not limited to, San Diego Municipal Code section 22.3019 requiring the Contractor and each Subcontractor to comply with, and cause its Subcontractors to comply with, California Labor Code sections 1720 through 1861 (State of California prevailing wage law) for construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in Exhibit "D" attached to this Agreement.

9. A new Section 12.5 is added to the Agreement as follows:

12.5 Definition of Subcontractor. For purposes of this Agreement, the term "Subcontractor" means any person or entity with which Contractor contracts for the performance of services or the supplying of materials that will be paid for in whole or in part with funds received by Contractor pursuant to this Agreement.

10. Section 15.1 of the Agreement is deleted in its entirety and replaced with the following:

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. Contractor's obligation to comply with all applicable law in performing this Agreement includes, but is not limited to, San Diego Municipal Code section 22.3019 requiring the Contractor to comply with, and cause its Subcontractors to comply with, California Labor Code sections 1720 through 1861 (State of California prevailing wage law) for construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000, all as further described in Exhibit "D" attached to this Agreement.

11. Exhibits B1, B2, and C of the Agreement are deleted in their entirety and replaced with the amended Exhibits B1, B2, and C attached to this First Amendment.
12. Exhibit D Attached to this First Amendment is added to the Agreement.
13. All terms and conditions of the Agreement, as amended by this First Amendment, shall continue in full force and effect.

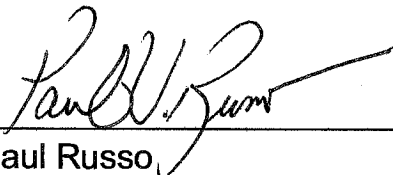
[Remainder of page intentionally left blank. Signatures on following page]

**SIGNATURE PAGE
TO
FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION,
AND COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION
FOR THE MANAGEMENT OF THE
COLLEGE AREA BUSINESS IMPROVEMENT DISTRICT
COMMENCING FISCAL YEAR 2014**

IN WITNESS WHEREOF, this First Amendment is signed and entered into by City and Contractor, acting by and through their respective authorized representative identified below.

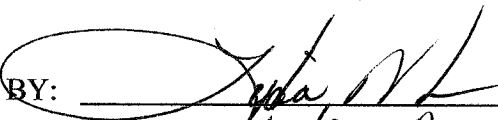
Date: February 17, 2016

CONTRACTOR, a California non-profit, public benefit corporation

BY: 
Name: Paul Russo
Title: Board President


Date: 6/14/2016

CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: Lydia M. Moreno
Title: Deputy Director

APPROVED AS TO FORM:

JAN I. GOLDSMITH, City Attorney

BY: 
Delmar G. Williams
Deputy City Attorney

AMENDED 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.

- During the first two working days of each month, City staff shall determine the revenue posted during the prior 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 four 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 the first five working days of the month.
- City Comptroller’s staff will review the request and, if appropriate, release the payment in accordance with the Vendor Payment Term of NET20.

The Reconciliation Report for a month, which is an accounting of the use of the assessment funds, shall be submitted to the City on or before the 25th day of the following month, except that at year end, the Reconciliation Report for the May revenue distributed in June shall be due by the second business day after July 4.

For example, the September revenue posted will be disbursed by the City on or before October 25 and Contractor shall be notified by 5th business day of October as to the amount that will be provided, and the Reconciliation Report for the use of those funds shall be submitted by the Contractor on or before November 25. If a disbursement to the Contractor is delayed due to non-compliance with any provision of this Agreement, then the Reconciliation Report documenting eligible expenses shall still be due on the 25th of the month following the month in which the disbursement would normally have occurred.

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 15 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.

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)
- SBEP Technical Assistance
- EDTS
- CDBG
- Creative Communities San Diego (Arts and Culture funding)
- Council District Awards - Community Projects, Program & Services (CPPS)
- County Grant Funding
- Other (fundraising)

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

- Form (Cover letter) for each funding source associated with OSB (BID and SBEP Mgmt Grant should be on one form) indicating:
 - The amount of eligible BID expenses;
 - The amount of the BID expenses to be applied against the corresponding month's BID disbursement and any outstanding BID disbursement from prior months;
 - SBEP expenses to be applied against grant advance;
 - Any disbursement accrued for a future purpose; and
 - Any BID expenses to be reimbursed (if applicable; see Exhibit B2 for more information).

The cover letter/form must be signed by an authorized signer of the corporation, but not the Executive Director

- Summary Profit and Loss Report* for ALL classes, by class, for the month.
- Transaction Detail by Account Report* for each Economic Development Department Funding source.
- Custom Journal Report* for all transactions in the month indicating the split of each expenditure between the various funding sources (classes).
- Bank Reconciliation Report.
- Bank Statement(s) – include all pages.
- Monthly Activity Report based on the Council-approved Budget Report of proposed activities and improvements for the fiscal year.
- One 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. 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 Transaction Detail by Account Report.

- 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. However, payment of expenses from prior fiscal year(s) will not be eligible.
- 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 (or a map with driving directions and distance), the destination for each trip, and the purpose of the trip.
- **Please note that ineligible expenses include, but are not limited to: late fees, finance charges (for late payments), citations, other penalties, nonsufficient fund bank fees, gifts, donations, gift cards, and alcohol purchases.**
- One copy of the Board Agenda, Meeting Minutes and Attendance sheet(s).

**These should be set up as memorized reports.*

All vendors are required to register with the City for the ACH payment program. 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, ACH payments are generally deposited into the receiving bank account the next working day (in the morning).

Reconciliation reports must be compiled in the following order:

PACKET CHECK LIST		
Document	Source	Included
Form (Cover Letter) signed	Template	
P&L Summary by class (for all classes)	QB	
Transaction Detail Reports for each City Funding Source (with City G/L Codes for MADs)	QB	
Journal Report (Custom)	QB	
Bank Reconciliation(s) report	BID office	
Bank Statement(s)	QB	
ONE copy of Back Up for each for each of the expenses in the same order as the Transaction Detail Report	Check/Invoice	
Activity Report	Template	
Agenda		
Minutes	BID office	
Attendance Sheet(s)	BID office	

AMENDED EXHIBIT B2

BID REIMBURSEMENTS

Assessments may also be provided on a reimbursement basis.

The monthly Reconciliation Report may also include documented expenses above and beyond those required to account for that month's disbursement, in which case the additional eligible expenditures may be reimbursed without submitting any separate packet.

Reimbursement requests for eligible expenses not included with the monthly Reconciliation Report must include all documents per the check list from Exhibit B1 and the back-up documentation must adhere to the requirements specified in Exhibit B1. The Reimbursement Request must also include a brief report on the implemented activities or improvements.

Expenses budgeted and 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. See Exhibit B1 for ineligible expenses.

Reimbursement Procedures and Checklist

A form/cover letter indicating how much is requested for reimbursement and how much is being applied against any outstanding disbursement (agreement advance) must be submitted, along with the remainder of the packet, as specified in Exhibit B1. The cover letter/form must be signed by an authorized signer of the corporation, but not the Executive Director

AMENDED 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 within 30 days.

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 which obligate or will result in the expenditure of any BID assessments, interest or penalties 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 including that the selected vendor(s) must have a valid City of San Diego Business Tax Certificate unless otherwise exempted by Federal, State, or local law and except that the threshold amounts shall be as listed below and all quotes or pricing must be obtained in writing.

Agreements for such procured goods or services may not exceed five (5) years nor may they be renewed unless such possible renewal was included in the original solicitation and such renewal does not result in the total term of the agreement exceeding five years. A simple extension of the term of an agreement which does not result in an obligation on the organization to pay additional monies to the contractor is not considered to be a renewal of the agreement. However, the extension should not result in a term exceeding five years.

When a *contract* provides for an expenditure equal to or less than \$10,000 in total, the Nonprofit Corporation may award the *contract* but shall obtain at least two competitive prices in writing.

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

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000 in total, the Nonprofit Corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

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.

EXHIBIT D

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019 (“PWO”), construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 (“Prevailing Wage Law”) and in undertaking any and all such work, the Contractor and its Subcontractors shall comply with Prevailing Wage Law, including, but not limited to, the requirements set forth in this Exhibit “D.” This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” pursuant to San Diego Municipal Code sections 22.4201 through 22.4245 (“LWO”) and Section 14.4 of this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, the Contractor must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.
 - A. Compliance with Prevailing Wage Requirements. Pursuant to Prevailing Wage Law, the Contractor and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (DIR), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.
 - 1) Copies of the prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and/or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested party upon request. Contractor shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.
 - 2) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous

wage rate. If the last of such predetermined wage rates expires during the term of this Agreement, such wage rate shall apply to the balance of the term of this Agreement.

- B. Penalties for Violations. Contractor and its Subcontractors shall comply with California Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.
- C. Payroll Records. Contractor and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall, and shall require its Subcontractors to, comply with California Labor Code section 1776, including, without limitation, having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Contractor and its Subcontractors shall also submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Further, Contractor and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Contractor is responsible for ensuring that its Subcontractors submit certified payroll records to the City, the Labor Commissioner and DIR.
- D. Apprentices. Contractor and its Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.
- E. Working Hours. Contractor and its Subcontractors shall comply with California Labor Code sections 1810 through 1815, including, but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- F. Required Provisions for Subcontracts. Contractor shall include, at a minimum, a copy of the following provisions in any contract it enters into with a Subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- G. Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Contractor and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Contractor and each of its Subcontractors certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Contractor shall include this certification by each Subcontractor in each contract with a Subcontractor.

- H. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established, after an investigation by the City or other governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- I. Contractor and Subcontractor Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 1) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
 - 2) A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Labor Code section 1725.5.
 - 3) By entering into this Agreement, Contractor is certifying that it has verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.
- J. Filing of Form PWC-100. Contractor shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.
- K. Filing of Notice of Completion. Contractor shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

Item - 325
subitem - B 5/19/2015

(R-2015-569)

RESOLUTION NUMBER R- 309751

DATE OF FINAL PASSAGE MAY 28 2015

A RESOLUTION OF THE COUNCIL OF THE CITY
OF SAN DIEGO APPROVING AND AUTHORIZING THE
EXECUTION OF FIRST AMENDMENTS TO THE OPERATING
AGREEMENTS FOR THE SPECIFIED BUSINESS
IMPROVEMENT DISTRICTS.

WHEREAS, in accordance with the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code sections 36500-36551), the eighteen Business Improvement Districts identified below (Districts) were formed in the City of San Diego to levy assessments annually to pay for certain improvements and activities within the Districts; and

WHEREAS, the City Council, in accordance with applicable law and City Council Policy 900-07, wishes to continue the promotional activities of the Districts; and

WHEREAS, on May 24, 2013, the City Council adopted Resolution No. R-308144, in which the City Council approved five-year operating agreements (Operating Agreements) with the associations that administer the Districts (Associations) to be effective as of July 1, 2013 and continue until June 30, 2018; and

WHEREAS, First Amendments to the Operating Agreements (First Amendments) are necessary to allow for a new process for determining and disbursing Small Business Enhancement Program funds to Associations and to clarify procurement procedures given changes to Divisions 30-36 of Article 2, Chapter 2 of the San Diego Municipal Code; and

WHEREAS, effective MAY 28 2015, the City Council adopted Resolution No. R- 309750, in which the City Council confirmed the Budget Reports for the period of July 1, 2015 through June 30, 2016 (FY 2016) for each of the specified Districts in the City of San Diego;

NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:


1. The City Council hereby approves the First Amendments with the following Associations for each of the respective Districts in the form and content attached to the backup materials for the City Council agenda item adopting this Resolution, those First Amendments being on file with the Office of the City Clerk under the following document numbers:

<u>Association</u>	<u>Business Improvement District</u>	<u>Document No.</u>
Adams Avenue Business Association, Inc.	Adams Avenue	RR- <u>309751</u> - 1
City Heights Business Association	City Heights	RR- <u>309751</u> - 2
College Area Economic Development Corporation	College Area	RR- <u>309751</u> - 3
Diamond Business Association, dba Southeastern Diamond Business District	Diamond	RR- <u>309751</u> - 4
Downtown San Diego Partnership, Inc.	Downtown Improvement Area	RR- <u>309751</u> - 5
East Village Association, Inc.	East Village	RR- <u>309751</u> - 6
El Cajon Boulevard Business Improvement Association	El Cajon Boulevard Gateway	RR- <u>309751</u> - 7
El Cajon Boulevard Business Improvement Association	El Cajon Boulevard Central	RR- <u>309751</u> - 8
Gaslamp Quarter Association, Inc.	Gaslamp	RR- <u>309751</u> - 9
Hillcrest Business Improvement Association, Inc.	Hillcrest	RR- <u>309751</u> - 10
La Jolla Village Merchants Association	La Jolla	RR- <u>309751</u> - 11
Little Italy Association	Little Italy	RR- <u>309751</u> - 12

Mission Hills Business Improvement District	Mission Hills	RR- <u>309751</u> - 13
North Park Organization of Businesses, Inc.	North Park	RR- <u>309751</u> - 14
Ocean Beach Merchant's Association, Inc.	Ocean Beach	RR- <u>309751</u> - 15
Old Town San Diego Chamber of Commerce	Old Town	RR- <u>309751</u> - 16
The Pacific Beach Community Development Corporation dba Discover Pacific Beach	Pacific Beach	RR- <u>309751</u> - 17
San Ysidro Improvement Corporation	San Ysidro	RR- <u>309751</u> - 18

2. The Mayor or designee is authorized and directed to execute the First Amendments identified in paragraph 1 of this Resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Michael T. Reid
Deputy City Attorney

MTR:sc
04/10/15
Or.Dept: Econ. Dev.
Doc. No.: 992720

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 19 2015.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/28/15
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 19 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 28 2015.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Kennedy*, Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Resolution Number R- <u>309751</u></p>
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Passed by the Council of The City of San Diego on May 19, 2015, by the following vote:

YEAS: LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE,
SHERMAN, ALVAREZ, EMERALD

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-309751, approved on May 19, 2015. The date of final passage is
May 28, 2015.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Jeannette I. Santos, Deputy