

**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION,
AND LA JOLLA VILLAGE MERCHANTS ASSOCIATION
FOR THE MANAGEMENT OF THE
LA JOLLA 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 LA JOLLA VILLAGE MERCHANTS ASSOCIATION (Contractor), hereinafter collectively referred to as the “Parties,” for the management of the La Jolla 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 given 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 the original Agreement and this First Amendment, and for 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 the 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 which may be granted 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 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 which 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 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 Exhibit B1 and B2 of this Agreement shall not, by itself, subject such Non-Public Funds to the provisions of this Agreement.
8. Exhibits B1, B2, and C of the Agreement shall be deleted in their entirety and replaced with the attached Amended Exhibits B1, B2, and C.
 9. All other terms and conditions of the original Agreement shall remain in full force and effect.

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[signatures on following page]

IN WITNESS WHEREOF, this First Amendment is executed by the City of San Diego, acting by and through the Mayor.

Date: _____

CONTRACTOR - La Jolla Village Merchants Association

BY: _____

Name: _____

Title: _____

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Date: _____

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: Michael T. Reid

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 five 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.

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 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 the 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 form/cover letter 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.
- Banks 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 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 form/cover letter 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 obligates 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.