OPERATING AND MANAGEMENT AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND
DOWNTOWN SAN DIEGO PARTNERSHIP, INC.

THIS OPERATING AND MANAGEMENT AGREEMENT (Agreement) is made and entered into this 1st day of July, 2015, by and between the City of San Diego, a municipal corporation (City) and Downtown San Diego Partnership, Inc., a non-profit mutual benefit corporation ("Partnership" or "Contractor").

RECITALS

WHEREAS, in 2000 a Property and Business Improvement District (PBID) was formed to provide certain services in the downtown area of San Diego. The PBID was renewed in 2005, and renewed again in 2015 by Resolution No. _____; and

WHEREAS, the renewed PBID is subject to the Management District Plan (MDP) dated _____, which is attached hereto as Exhibit C and incorporated by reference. The MDP states that the Partnership, as the Owners' Association for the PBID, will be responsible for implementing the improvements, maintenance, and activities described in the MDP (District Services); and

WHEREAS, pursuant to Streets and Highways Code section 36651, the City shall contract with the Partnership, as the designated nonprofit corporation, to provide District Services; and

WHEREAS, in June of 2000 and April 2005 the City and Partnership (collectively, the "Parties") entered into two agreements (the "2000 Agreement" and "2005 Agreement") whereby the Partnership agreed to operate and manage the PBID; and

WHEREAS, the PBID has been formally renewed, in accordance with state law, and extended for a period of ten (10) years, commencing July 1, 2015; and

WHEREAS, the MDP identifies that the Partnership will serve as the Owners' Association for the PBID for the term of the extension of the PBID, and the Partnership is willing and able to continue to serve as the Owners' Association; and

WHEREAS, the Partnership has the expertise, experience, and personnel necessary to provide District Services; and

WHEREAS, the Parties have agreed to enter into this new Agreement, superseding the 2000 Agreement and 2005 Agreement, based on the current status of the PBID operation and the mutual agreement of the Parties as to the division of responsibilities through the term of the Agreement; and

WHEREAS, the City is obligated to provide baseline level services citywide and, at the sole discretion of the City Council as allowed by law, may increase or reduce such baseline services; and

WHEREAS, the City anticipates it will provide certain baseline services within the PBID boundaries as set forth in the "City of San Diego Baseline Services" memorandum attached as Exhibit A to this Agreement (Baseline Services) but is not obligated to maintain the same Baseline Services throughout the term of the Agreement; and

WHEREAS, the City may reduce Baseline Services provided within the PBID boundaries, including but not limited to the levels and frequency of the Baseline Services, as part of citywide service reduction, or revenue downturn, or as otherwise allowed by law; however City is not permitted to rely on PBID activities or PBID assessment funds to meet Baseline Services; and

WHEREAS, the City has immunities and pooled self-insurance against claims for liability arising from dangerous conditions of its public property, but it is difficult for the Partnership to obtain private insurance against such claims; and

WHEREAS, the Parties desire to allocate between them the risk of liability for claims by third parties in a manner that is fair and equitable;

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

AGREEEMENTS

1. Incorporation of Recitals. The Recitals set forth above are incorporated in full and made a part of this Agreement by this reference.

2. Term of Agreement. This Agreement shall commence on July 1, 2015 (Effective Date) and continue until June 30, 2025, unless terminated earlier in accordance with the terms of this Agreement.

3. Supersession of 2000 and 2005 Agreements. As of the Effective Date, the terms of this Agreement shall supersede the terms of the 2000 Agreement and 2005 Agreement.

4. Obligations of the Parties.

(A) Liaisons. The City and Partnership shall each designate a liaison for the purpose of coordinating all services and obligations of both Parties to this Agreement.

(1) The "City-designated liaison" for purposes identified in this Agreement shall be the Property Assessment District Program Manager.

(2) The "Partnership-designated liaison" for purposes identified in this Agreement shall be:

Name
Title
Phone
Email

(3) Designated liaisons may be changed from time to time during the Term as necessary by providing written notice of such change to the appropriate contact stated herein. The Mayor, Mayor's designee, or Partnership shall have the authority to amend the Agreement for this purpose. City, through the Mayor or designee, shall provide notice in writing to Partnership-designated liaison within ten (10) days of changing the City-designated liaison. Partnership shall provide notice in writing to the City-designated liaison within ten (10) days of changing the identity or contract information for the Partnership-designated liaison.

(B) City Obligations.

(1) City currently provides Baseline Services within the PBID boundaries as set forth in the "City of San Diego Baseline Services" memorandum attached as Exhibit A to this Agreement (Exhibit A). On or before May 1 each year throughout the Term of the Agreement, City agrees to provide an updated Exhibit A identifying City-provided Baseline Services for the coming fiscal year. The proposed Baseline Services each year would be subject to confirmation by the City Council through the City's annual budget process. The Parties to the Agreement understand that the City Baseline Services, including but not limited to the level and frequency of the services, may change, at the sole discretion of the City Council and as allowed by law.

(2) The Mayor, or designee, shall have and use the authority to bind the City to all decisions made subject to this Agreement that do not require approval by formal action of the City Council. The City-designated liaison shall promptly report any perceived deficiencies in the Partnership's performance under this Agreement, to the Partnership-designated liaison, but in no event later than thirty (30) business days of the City-designated liaison's actual knowledge of the perceived deficiency. No such perceived deficiency may be considered a breach of this Agreement unless the City-designated liaison has first given the Partnership-designated liaison timely written notice detailing the perceived deficiency, and thirty (30) business days from the date the Partnership receives such notice, to cure or otherwise respond to the perceived deficiency. For all purposes under this Agreement, "receipt" of notice shall be deemed to have occurred the day of delivery, if hand-delivered, or three (3) days after the postmarked date on the documentation, if sent by first-class mail.

(C) Partnership Obligations.

(1) The Partnership shall serve as the PBID Owners' Association in accordance with the provisions of the MDP, the Property and Business Improvement District Law of 1994, as may be amended, and the Resolution renewing the PBID. The Partnership may

subcontract for PBID-related services as delineated in the MDP, subject to and in accordance with City's standard contracting procedures.

(2) In addition to the specific obligations of the Partnership set forth in this Agreement, the Partnership shall be obligated to perform all duties and services described in the "Downtown San Diego Partnership Enhanced Services" memorandum attached to this Agreement as Exhibit B the terms of which are incorporated herein by reference (Exhibit B). Notwithstanding any other provision of this Agreement, the Partnership shall only be obligated to provide services expressly covered by this Agreement and funded by either PBID assessment revenues or general benefit funds raised by the Partnership.

(3) The Partnership-designated liaison shall have and use the authority to bind the Partnership to all decisions regarding this Agreement that do not require approval by formal action of the Partnership's Board of Directors.

(4) Meetings.

(a) Meeting(s) with Property Owners. The Partnership shall provide at least one (1) meeting annually with the property owners within the District, which shall be noticed in accordance with the Ralph M. Brown Act.

(b) Regular Meetings. The Parties, through their respective designated liaisons, will meet in person at least twice per year during each fiscal year of this Agreement, to review the Parties' performances and discuss, in the spirit of cooperation, changes that may enhance each party's ability to perform and provide the services called for by this Agreement. Each such meeting shall also be used for the Parties to raise and resolve any issues surrounding the then-current or next anticipated annual budget for PBID operations.

(D) Notice of Safety Hazards.

(1) In providing services pursuant to this Agreement, the Partnership and its employees and agents will have the opportunity to observe conditions in the public right-of-way that may constitute a safety hazard. For purposes of this Agreement, "safety hazard" includes, but is not limited to, the following conditions: cracked, raised, uneven, damaged, or unsafe sidewalks or curbs; fallen or drooping tree branches; cut or protruding tree stumps; conditions on public property affecting private property. The Partnership agrees that its employees and agents will make reasonable efforts to promptly barricade the affected public property, where reasonable under the circumstances, and make reasonable efforts to provide notice of such conditions to the City-designated liaison. The Partnership shall have no obligation to repair or otherwise protect against such conditions, and shall have no liability to the City or any third party for claims or loss related to safety hazard conditions, except to the extent that the Partnership, its employees, or agents have i) previously provided work causing such condition to occur; or ii) previously accepted in writing responsibility for the

maintenance, repair, or otherwise safety of the particular improvement (e.g. sidewalk, curb, tree, shrub, lighting fixture, or other similar improvement) causing the dangerous condition on public property; or iii) notified the City in writing that it intends to address the safety hazard utilizing material or service in excess of Baseline Service repairs.

(2) The Parties agree they will each (i) direct their respective employees not to suggest to any third party that they file a complaint against the other party, based on any claimed injury or damage suffered in connection with the safety hazards covered by this Section 4, and (ii) not file a complaint or cross-complaint against the other party based upon such claimed injury or damage, without good cause for believing the other party is liable as delimited by this Section, and not before the designated liaison for the party contemplating suit has given the other Party's designated liaison ten (10) business days' written notice of the claim, including all of the facts upon which the complaining Party's complaint or cross-complaint will be based.

5. Budget and Financial Obligations

(A) The Parties shall timely carry out all actions reasonably necessary to process the annual budget for the PBID operations. The Parties shall also cooperate on an ongoing basis to ensure that the functions of the PBID identified in this Agreement are timely and adequately funded, so as to avoid disruption in service.

(B) On July 1, 2015, or as soon as feasible thereafter but no later than July 31, 2015 and annually thereafter upon receipt of written request from the PBID, the City will make a working capital advance to the PBID that brings their outstanding advance to an amount equal to three months of working capital based on the monthly cash flow budget requirements as noted in the approved PBID budget. If necessary, the City will permit the working capital advance to remain outstanding until all annual PBID assessment revenue has been received into the Downtown PBID Fund which is maintained by the City or apply the advance against the last three months of expenditures for each fiscal year.

PBID assessment revenue is collected by the County and remitted to the City throughout the fiscal year. Most of the annual assessment revenue is collected and remitted to the City in the months of January and May. The City deposits all PBID assessment revenue in the Downtown PBID Fund to fund appropriate PBID expenditures. When the fund has a positive balance, it earns interest at the rate of return on the City's investment pool for that time period. When the fund has a negative balance (i.e., at the beginning of the year when cash is advanced before PBID assessments are received), it is charged interest at the rate of return on the City's investment pool for that time period.

In order to effectuate appropriate service provision and compliance with the MDP and Engineer's Report, the City will provide the Partnership with quarterly reports on which parcels are delinquent in payment of the assessment.

(C) The City will withhold three percent (3%) of the assessments received from the County as a contingency. Actual PBID assessment revenue may fluctuate based on non-payment

of assessments in any given Fiscal Year. Annually, prior to finalizing the proposed budget for the coming fiscal year, City shall identify the percentage of unpaid assessments (Delinquency Rate) for the previous three Fiscal Years, then average the Delinquency Rates for the three previous Fiscal Years (Three-Year Delinquency Rate) and add one percent (1%). City shall make available for inclusion in the proposed budget the projected balance of contingency funds estimated to be remaining as of July 1 each year that exceed the Three-Year Delinquency Rate plus one percent (1%).

(D) All funds collected pursuant to the PBID assessments (whether received from the County tax collector or otherwise collected by the City) shall be timely deposited and appropriately credited by the City to the Downtown PBID Fund, or such other account as the City designates as the fund for holding PBID assessments for the benefit of the PBID. The City shall reimburse the Partnership for all services performed in accordance with this Agreement, not later than twenty (20) calendar days after receipt by the City of complete and accurate documentation requesting and supporting such reimbursement. The Partnership shall maintain, and shall produce to the City at its request and in accordance with Section 6(A), below, all records relating to the expenditure of such funds. All such records shall be subject to the retention requirements of Section 6(A), below.

By May 15 of each year, or on another date mutually agreed upon, the Partnership shall deliver to the City-designated liaison a proposed budget for the coming Fiscal Year and any proposed adjustments to Exhibit B in response to the City's proposed City-provided baseline services for that coming fiscal year. The Partnership agrees that its budget for each Fiscal Year shall include the sum of $150,000 for City administrative costs. In the event that administrative costs change in future fiscal years, the Parties agree to discuss possible amendments to the annual budget for administrative costs, in accordance with the MDP. The Parties shall meet annually prior to Council approval of the proposed PBID budget to review and adjust, as agreed, the scope and terms of their respective obligations as set forth herein and in Exhibits A and B. If the City's adopted budget regarding City-provided baseline services differs from the City's proposed budget such that previously agreed upon changes to the scope and terms of the City's and Partnership's respective obligations are not appropriate then the Parties will meet within 30 days of the adoption of the City's budget to further review and adjust, as agreed, the scope and terms of their respective obligations as set forth herein and in Exhibits A and B. By written amendment to this Agreement, and at the discretion of the City, as authorized by the Mayor or designee, the Parties may adjust such scope and terms so long as the division of responsibilities and financial commitments complies with applicable laws.

(E) The City agrees that it will continue to allocate funding to the Downtown PBID Fund for landscaped and hardscaped median maintenance within the PBID at the citywide rates established in the City's annual budget process (although these rates may change in future fiscal years, the Fiscal Year 2015 rates are $.2803 per square foot of landscaped median and $.0443 per square foot of hardscaped median). Regarding PBID maintenance of the public water feature in Children's Park, the City agrees to contribute 50% of the contracted maintenance costs for the Children's Park water feature. In the event that water feature maintenance costs change in future fiscal years, the Parties agree to discuss possible amendments to the annual budget for water feature maintenance. Nothing in this section shall prevent the Parties from agreeing to

subsequent modification of the PBID budget in any given year, as the Parties may agree is necessary. As provided in the MDP, the Partnership may annually adjust the categorical allocations by no more than fifteen percent (15%) of the total budget, in order to effectuate the efficient provision of services and respond to changing service costs or needs. Any adjustment will be reflected in the annual report.

(F) The Partnership shall provide an audited financial statement of the PBID within one hundred and fifty (150) days after the end of each Fiscal Year or within sixty (60) days of the Partnership receiving necessary information from the City to complete the audit, whichever is later. All expenses incurred in connection with this audit shall be charged as a PBID expense and shall not be the financial responsibility of the Partnership. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles and audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards. The statements must include a Statement of Expenditures of PBID funds identified in the same expenditure classifications as contained in the City's final budget and compared to the budget amounts (within the 15% adjustment allowed for in the MDP and described in paragraph (d) above), and a Statement of Compliance with the terms of this Agreement signed by the Partnership. Failure to comply with these requirements could result in suspension of any current payments or possible future funding; provided, however, that the City shall not suspend any current or future payments under this Section until it has first given the Partnership written notice identifying the failure to comply, and allowed the Partnership thirty (30) days from the date of the Partnership's receipt of such notice to cure such failure.

(G) The Partnership shall not commingle in the same bank account (i) any funds it receives under this Agreement with (ii) any other funds that the Partnership may receive (except for interest earned on funds deposited in the account).

6. Documents and Records

(A) At any time during normal business hours, the City shall have the right to demand, and the Partnership shall make available to the City for examination, at the offices of the Partnership, all data and records pertaining to all matters covered by this Agreement. The Partnership shall permit (and shall require that its subcontractors permit) the City (at the City's sole expense) to audit all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.

(B) The Partnership shall (and shall require its subcontractors to) maintain such data and records for a period of three (3) years following the termination of this Agreement. All such data and records shall be kept at the Partnership's (or the relevant subcontractor's) regular place of business and shall be subject to the review and audit provisions in Section 6(a), above.

(C) Notwithstanding the foregoing, upon the termination of this Agreement for any reason, the City may request that the Partnership turn over to the City the original of all such data and records. If the Partnership is required to turn over such data and records to the City, it will comply with reasonable promptness; however, upon delivery of the data and records to the City-designated liaison, the Partnership's retention and audit responsibilities with respect to such

data and records shall terminate and the Partnership shall not thereafter be liable for any claim of loss or damage arising from or related to the availability or condition of the data or records. The Partnership may retain copies of all data or records turned over to the City.

(D) Once the Partnership or its subcontractors have been compensated for services performed, all documents, including but not limited to reports and maps prepared directly in connection with or related to the scope of services performed under this Agreement, shall be the property of the City. The City's ownership of such documents includes all incidental rights, whether or not the work for which they were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of services hereunder, the expiration of the Agreement, or in accordance with any other provision of this Agreement.

(E) Pursuant to the MDP, meetings of the Partnership's Board and Committees wherein PBID business is heard or conducted must be held in compliance with the public notice and other requirements of the Ralph M. Brown Act. Further, the Partnership must maintain and disclose any PBID-related records in accordance with the California Public Records Act. Each and every website for the District or Contractor shall post: all regular meeting agendas and any non-confidential back-up materials; approved meeting minutes; Contractor's Articles of Incorporation or Formation, including any and all amendments thereto; Contractor's Bylaws, including any and all amendments thereto; any annual audits or financial disclosures, the Annual Report; contracts awarded in accordance with the Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego, which are $35,000 or more, including a notation of the number of bidders for such contracts; Contractor's tax returns, including any and all amendments thereto; any and all determinations of Contractor's tax-exempt status by the Internal Revenue Service or Franchise Tax Board; and any other information or materials required by this Agreement to be posted on a website. All such items shall be posted not more than five business days after they become available. Social security numbers, employer identification numbers, and other confidential information must be redacted from the posted materials.

(F) Pursuant to Streets and Highways Code section 36650, the Partnership shall prepare, or cause to be prepared, and present to the City an annual report, to be included with the proposed budget referenced in 5(e). The report will include:

(1) Any proposed changes in the boundaries of the PBID or in any benefit zones or classification of property within the district;

(2) The improvements and activities to be provided for that fiscal year;

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year;

(4) The method and basis of levying the assessment in sufficient detail to allow each real property owner to estimate the amount of assessment to be levied against his or her property for that fiscal year;

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year; and

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to the MDP.

7. Indemnification

(A) Except as specifically limited by section 4(D) above, the Partnership agrees to defend, indemnify, protect and hold the City, its officers, agents and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to, any person, including injury to the Partnership's officers, agents and employees, but only to the extent such claims arise from or are directly connected with or attributable to the Partnership's negligence or failure to perform services or other obligations under this Agreement. This duty to indemnify and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the City, its officers, agents or employees, or any third party. Further, in the event the Partnership is only partially liable on an established claim, the above duty of indemnification shall be limited to the extent of the Partnership's comparative fault.

(B) Except as specifically limited by section 4(D) above, the City agrees to defend, indemnify, protect and hold the Partnership, its directors, officers, members, employees and agents harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to, any person, including injury to the City's officers, agents and employees, but only to the extent such claims arise from or are directly connected with or attributable to the City's negligence or failure to perform services or other obligations under this Agreement. This duty to indemnify and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the Partnership, its officers, agents or employees, or any third party. Further, in the event the City is only partially liable on an established claim, the above duty of indemnification shall be limited to the extent of the City's comparative fault.

(C) In the event either the City or the Partnership is presented with a claim involving potential liability for both the City and the Partnership, the party to whom the claim is presented shall provide prompt written notice of the claim to the other party. When written notice of the claim is provided, the City and the Partnership shall meet and confer in good faith in an effort to defend the claim cooperatively. In the event there is a dispute between the City and the Partnership regarding their respective liability for or cooperative defense of such claim, both Parties agree to meet and confer in a good faith effort to resolve their differences in the matter. A party's failure to provide prompt notice and to make a good faith effort to cooperatively defend such a claim shall entitle the other to disclaim the duty to defend, indemnify and hold harmless established by this Section 7.

(D) In the event of litigation that involves both the City and the Partnership both Parties will endeavor to work together to resolve the claim. In the event there is a disagreement between the City and The Partnership both Parties agree that such disputes shall be submitted to nonbinding mediation in accordance with Section 9 of this Agreement prior to either arbitration or litigation.

8. Insurance

(A) Contractor shall not begin any performance under this Agreement until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the Specifications. 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 or in the Specifications. 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 by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. In the event the insurance company cancels or non-renews coverage they will provide 30 days written notice to the City.

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

Subcontractors performing work on behalf of Contractor shall take out and maintain policies of insurance equal to those required of Contractor in this Section 8, and sufficient to provide coverage for that subcontractor's work in relationship to this Agreement. Contractor shall not authorize performance by a subcontractor under this Agreement until it has confirmed that subcontractor has provided all insurance certificates and endorsements required and described herein.

(B) At the sole cost and expense of the PBID, the Partnership shall take out and maintain at all times during the Term of this Agreement the following policies of insurance:

(1) 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 bodily injury, personal injury, advertising 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 claims or contractual liability. All defense costs shall be outside the limits of the policy.

(2) Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, 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. The insurance certificate shall reflect coverage for any automobile (any auto).

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

(C) Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided. Payment of deductibles for policies required by this Agreement shall be considered appropriate PBID expenses, subject to authorization by the MDP and PBID Law, and shall be reimbursed in accordance with Section 5 of this Agreement.

(D) Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement, shall only be carried by insurance companies with a current 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 City. 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 Approved Surplus Lines Insurers (LASLI 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.

(E) Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Agreement.

(1) 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 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 City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, 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 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.

(2) 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 City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor. The City is an additional named insured and insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, 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 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.

(3) 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 City, its 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 City.

(F) Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Agreement, without overhead, profit, or any other markup.

(G) Additional Insurance. Contractor may obtain additional insurance not required by this Agreement.

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

(I) Nothing in this section shall create any implication that the Partnership owns, leases, controls, or uses any city property open to the general public, including but not limited to the public right of way.

In the event that the Partnership experiences hardship obtaining or maintaining the insurance coverage required in this Section 8, the Partnership may, at its discretion, request that the City reconsider the terms of this Agreement with respect to insurance and indemnity, and both parties negotiate in good faith.

(J) In the event of a claim or suit against the City alleging damages or injury having occurred within the PBID, the City shall not tender the defense of such a claim or suit to the Partnership's insurance carrier, nor shall the City have any rights as an additional insured under the Partnership's insurance policies, unless the claim or suit involves the following:

a. The City contacts the Partnership and discusses the claim or suit and both parties agree in writing before tendering; and
b. An occurrence of damage or injury arising out of the scope of work identified in Exhibit B; and
c. The alleged damage or injury arises out of the Partnership's acts or omissions, or the acts or omissions of those acting on the Partnership's behalf.

9. Termination

(A) General

(1) The City may terminate this Agreement with the Partnership at any time provided:

(a) A public hearing is held on the City's intention to terminate the Agreement with the Partnership;

(b) The Partnership is provided sixty (60) calendar days notice of the public hearing on the City's intention to terminate the Agreement;

(c) A notice of the public hearing is mailed at the City's expense at least fifteen (15) calendar days prior to the public hearing to each property owner within the PBID; and

(d) The City Council determines at the conclusion of the public hearing that it is in the best interests of the PBID to terminate the Agreement with the Partnership.

(2) Notwithstanding any other provision of this Agreement, the City may terminate this Agreement immediately if any of the reasons for disestablishment of the PBID, set forth in California Streets & Highways Code section 36670, are found to exist. In the event the

Agreement is terminated pursuant to this Section, the Partnership shall promptly turn over to the City all funds, books, records, data, vehicles, equipment, and other assets of the PBID.

(3) The Partnership may terminate this Agreement with the City at any time upon ninety (90) calendar days written notice, delivered in accordance with the provisions of this Agreement.

(4) Upon termination of this Agreement for any reason the City shall designate a different Owners' Association, pursuant to the MDP. Other than as specified for termination under this Agreement, the Partnership shall transmit to the City or new Owners' Association all funds, books, records, data, vehicles, equipment, leases, agreements and other assets and liabilities of the PBID no later than 30 calendar days after the receipt of the written notice of termination. Until the actual transfer is complete, the Partnership shall continue to manage and operate the PBID so that there is no interruption in or loss of service to the property owners within the PBID. Upon the transfer, the Partnership shall have no further legal, financial, operational or other obligations regarding the PBID.

(B) Termination for Default

(1) If either party to this Agreement fails to perform or adequately perform any material obligation required by this Agreement, that failure shall constitute a default. The non-defaulting party shall promptly give the defaulting party written notice of the occurrence of the default, and shall allow the defaulting party thirty (30) days thereafter to cure the default, or to submit a written plan of action to cure such a default within a reasonable and safe period of time thereafter. Failure to cure the default or timely submit the plan of action within said thirty-day period, or failure to adhere to the plan of action, shall entitle the non-defaulting party to terminate this Agreement in accordance with this Section.

(2) Notwithstanding the foregoing, if the nature of the default could endanger the public's health and safety, the defaulting party shall cure the default within seventy-two (72) hours of receipt of notice of the default; said notice must identify the default as one that endangers the public's health and safety. If the defaulting party fails to actually and timely cure the default, then the non-defaulting party may, in its sole and absolute discretion, immediately terminate this Agreement.

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

(D) No Waiver of Other Remedies. The rights and remedies of the Parties enumerated in this Section are cumulative and shall not limit the Parties' rights under any other provision of this Agreement or applicable law, or otherwise waive or deny any right or remedy, at law or in

equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

10. City-Mandated Clauses and Requirements

(A) Contractor Certification of Compliance. By signing this Agreement, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Agreement.

(1) Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Agreement by this reference.

(2) Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

(3) Non-Discrimination Requirements.

(a) Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

(b) Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, or other sanctions. Contractor shall ensure

that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

(c) Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions.

(4) Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Agreement.

(5) Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions.

(6) Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

(7) Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

(8) Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

(9) Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

(10) Business Tax Certificate. Any company doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Agreement is executed.

12. Conflict of Interest and Violations of Law

(A) Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

(B) Contractor's Financial or Organizational Interests. In connection with any task, 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.

(C) Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

(D) Hiring City Employees. This Agreement shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

13. Dispute Resolution

(A) Informal Resolution. If the Partnership and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective principals. Within five (5) calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five (5) days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

(B) Mediation. If the Partnership and the City cannot resolve the dispute through the informal means set forth above in Section 13(A), the Partnership and the City agree to mediate

any such dispute, and further agree that active, good faith participation in mediation is an express condition precedent to the institution of any litigation. Each party will bear its own attorney's fees and internal costs associated with the mediation.

(C) Selection of Mediator. A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible. Within five (5) business days of either party delivering a written request for mediation to the other party, the Parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the Parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within five (5) business days of the appointment of the mediator.

(D) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise. Mediator's fees and costs exceeding $10,000 will be shared equally by the Parties. If either party commences an action without first complying with this mediation provision, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available or awarded to such party in any such action.

(E) Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. Both Parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

(F) Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

14. Mandatory Assistance

(A) Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under an Agreement, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

(B) Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

15. Miscellaneous

(A) Headings. All headings are for convenience only and shall not affect the interpretation of this Agreement.

(B) Non-Assignment. Contractor may not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due under this Agreement, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

(C) Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Agreement, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

(D) Subcontractors. Subcontractors must maintain policies of insurance as required under Section 8 for all work performed related to this Agreement. Contractor shall not be directly responsible for a subcontractor's work provided that Contractor has confirmed evidence of insurance, based on certificates and endorsements, that subcontractor has met the requirements under Section 8.

(E) Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

(F) Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

(G) Governing Law. The Agreement shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

(H) Venue. The venue for any suit concerning solicitations or the Agreement, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

(I) No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

(J) 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.

(K) Drafting Ambiguities. The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether to seek advice of legal counsel with respect to this Agreement 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 Contract.

(L) Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.

(M) Conflicts Between Terms. If this Agreement conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits or attachments, and laws, regulations, or orders 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 Contract.

(N) Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

(O) Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce

method authorized by the Agreement, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

(P) No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, none of the provisions of this Agreement are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

(Q) Actions of City in its Governmental Capacity. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

(1) Compliance with Applicable Law. The Partnership shall comply with all applicable laws, rules, regulations, ordinances, resolutions and policies of the federal, state, and local governments as they pertain to this Agreement. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

(2) Conflict of Interest. It is hereby understood and agreed that the Parties to this Agreement have read and are aware of the provisions of Sections 1090 et seq. and Sections 87100 et seq. of the California Government Code relating to conflicts of interest for public officers and employees, as well as the conflict of interest codes of the City. All Parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall promptly terminate this Agreement by giving written notice thereof. The Parties acknowledge and agree that, in accordance with Streets and Highways Code section 36614.5, as the Owners' Association the Partnership is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Members of the Board and senior management will not be able to bid for or receive contracts from the PBID.

16. Wage Requirements

(A) Living Wages. Contractor shall comply with Living Wage Ordinance starting July 1, 2015. This Agreement is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Contractor to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition,

Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

(B) Prevailing Wages. Pursuant to SDMC section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding $25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding $15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to SDMC sections 22.4201through 22.4245. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to California Labor Code (Labor Code) sections 1720 through 1861, Contractor and its subcontractors shall ensure that all workers who perform work under this Agreement 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). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(a) Copies of such 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 its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

(b) 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 life of this Contract. 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 life of this Agreement, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Contractor and its subcontractors shall comply with 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.

3. Payroll Records. Contractor and its subcontractors shall comply with Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

4. Apprentices. Contractor and its subcontractors shall comply with Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Contractor and subcontractors shall comply with Labor Code sections 1810 through 1815 including but not limited to: (i) restrict 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) specify 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 Labor Code sections1810 through 1815.

6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: Labor Code sections 1771, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Contractor, in accordance with Labor Code section 3700, is required to secure the payment of compensation of its employees and by signing this Agreement, Contractor 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 agreement."

8. 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 investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the Equal Opportunity Contracting Department at 619-236-6000.

(c) Higher Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

17. Notice. In all cases where written notice is to be given under this Agreement, written notice shall be deemed sufficient upon receipt of such notice, if said notice is delivered in person to an officer or agent of the Party for which it was intended, or if delivered at or sent by certified mail, to the address of the Party as set forth in this Section 18. For the purpose hereof, unless otherwise changed by written amendment to this Agreement, as authorized by the Mayor or his designee, notice to the City shall be addressed to City of San Diego, Economic Development Department, 1200 Third Avenue, 14th Floor, San Diego, California 92101. Notice to the Partnership shall be addressed to Downtown San Diego Partnership, Wells Fargo Plaza, 401 B Street, Suite 100, San Diego, CA 92101.

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

19. Governing Law: Jurisdiction and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Parties hereto agree to submit to the personal jurisdiction of any state court in the County of San Diego, State of California for any dispute, claim or matter arising out of or related hereto, subject to the requirements of Section 9 of this Agreement.

20. Integrated Agreement. This Agreement including Attachments and/or Exhibits contains all of the agreements of the Parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement of the Parties.

21. Assignment. The Partnership shall not assign any part of its rights or obligations under this Agreement, and no such purported assignment shall be valid, without first obtaining the written consent to such assignment from the City.

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

23. Waiver. The failure of either party to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

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

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager, Ordinance No. 19365 and by the Partnership.

Dated the 8th day of May, 2015.

THE CITY OF SAN DIEGO

By:_____
Name: _____
Title: _____

DOWNTOWN SAN DIEGO PARTNERSHIP, INC.

By: _____
Name: Kris Michell
Title: President/CEO

I HEREBY APPROVE the form of the foregoing Agreement this ___ day of _____, 2015.

Jan Goldsmith, City Attorney

By:_____
Name: _____
Title: _____

Exhibit A
City of San Diego Baseline Services

Pursuant to the Operating and Management Agreement for the Downtown Property and Business Improvement District (Agreement) to which this document is attached as Exhibit A the City of San Diego (City) agrees to provide to the Downtown San Diego Partnership (Partnership) on or before May 1 each year throughout the Term of the Agreement an updated Exhibit A identifying City-provided proposed baseline services for the upcoming fiscal year (Baseline Services). The proposed Baseline Services each year would be subject to confirmation by the City Council through the City's annual budget process. The Parties to the Agreement understand that the City baseline services, including but not limited to the level and frequency of the services, may change, at the sole discretion of the City Council and as allowed by law. As of January 2015, the City provides, or provides for through contractors, the following citywide Baseline Services within the Downtown Property and Business Improvement District (PBID):

1. Maintenance of Street Safety Lights, Signals and Signal Lights: Maintain and repair street safety lights, signals and signal lights. The City shall be reimbursed from available PBID funds for the actual cost of maintenance and repair of special benefit street safety lights, pursuant to the terms and conditions of this Agreement. In addition to promptly responding to any repair needs reported to the City by the Partnership, the City repairs lights, signals and signal lights as needed. The City shall also, without reimbursement from the Partnership or PBID, re-paint the general benefit street lighting within the boundaries of the PBID. Only standard paint types and colors will be used. [Transportation and Storm Water Department: Street Division]

2. Maintenance of Streets, Signs, Curbs, and Traffic Legends: Repair and replace all street signs; paint curbs and traffic legends; and stripe streets consistent with the then-current citywide baseline service level. [Transportation and Storm Water: Street Division]

3. Street Sweeping: Regularly sweep the streets, pursuant to a schedule provided to the Partnership but not less frequently than once per week in each of the benefit zones within the PBID boundaries. The City Transportation and Storm Water Department liaison to the Partnership shall provide the City's schedule for street sweeping and keep the Partnership advised of the current schedule. The Partnership shall post the schedule on its website. [Transportation and Storm Water Department: Storm Water Division]

4. Storm Drains: Regularly clean the storm drains prior to the rainy season. Repair storm drains as needed, and remove debris from blocked storm drains. [Transportation and Storm Water Department: Storm Water Division]

5. Tree Maintenance: Maintain all palm trees in the public right-of-way in each of the benefit zones within the PBID. Trimming of palm trees should be performed as needed to prevent or minimize dead trees, fronds, leaves or other debris from littering the sidewalks and blocking the storm drains.

In accordance with City Council Policy 200-05, remove damaged, dead or dying trees of any kind in the public right-of-way and repair the tree area in each of the benefit zones within the

PBID boundaries. At the City's discretion, and if funding is available, the City may replace the tree. If an unsafe condition related to a damaged tree grate exists and is reported to the City's Street Division (619-527-7500 OR e-mail www.sandiego.gov and select Request a Street Repair - either means of reporting provides a "standard notification number" confirming that the report was made and received), the City will take action to mitigate the potential hazard. [Transportation & Storm Water Department: Street Division]

6. Graffiti Control: When graffiti is reported or observed in public places not related to City streets and traffic control, the City's Graffiti Control Program staff and its private contractor, will work with Partnership staff to remove graffiti located on privately owned property in the area which is visible from the street using the administrative abatement procedures found in Municipal Code Section 54.0405 and established practices.

With respect to graffiti that is on City streets and traffic control devices (i.e., stickers on street signs, signal boxes and poles,), the Street Division will respond to reports (619-527-7500 OR e-mail www.sandiego.gov and select Request a Street Repair - either means of reporting provides a "standard notification number" confirming that the report was made and received) by taking action to remove the graffiti. In the course of maintaining street and traffic-related infrastructure for which they are responsible, the Street Division will periodically remove graffiti from street infrastructure within the PBID boundaries. [Development Services Department: Graffiti Control Program and Transportation and Storm Water Department: Street Division]

7. Refuse Collection: Remove refuse and recycling from all eligible residences within the PBID boundaries in compliance with the San Diego Municipal Code. Remove trash from street litter refuse containers, as identified in collaboration with the Partnership, in the public right-of-way, in compliance with the San Diego Municipal Code and pursuant to a schedule provided to the Partnership but not less frequently than weekly within the PBID boundaries. The City will work with the Partnership to coordinate the City's regular street litter collection with the enhanced services provided by the Partnership.
[Environmental Services Department: Collection Services Division]

8. Street Litter Receptacles: Provide maintenance of City owned concrete street litter containers upon request of the Partnership as needed. Provide (directly or indirectly) serviceable replacement street litter receptacles when such receptacles are damaged or have otherwise exceeded their reasonable expected useful term. [Environmental Services Department: Collection Services Division]

9. Special Events: For special events proposed to take place within PBID boundaries that are required to obtain a City of San Diego Special Event Permit for the conduct of the event, the City shall:

(A) provide to the Partnership in a timely manner and in conformance with the City's permit application review process, information submitted to the City by the event organizer (applicant) regarding the event organizer's proposed plans to ensure that clean-up and restoration of the public right of way within the venue and surrounding area (200 feet around event perimeter) is completed within the guidelines established by the Special Events Ordinance;

(B) participate (in its discretion) in any pre-event and post-event walk-through inspections of the venue and surrounding area, scheduled by the Partnership; and

(C) upon notification by the Partnership that an event organizer has not restored the venue and surrounding area to the Partnership's satisfaction and a remedy between the two parities cannot be achieved, the City shall take the following steps to follow up on the Partnership's notification: (i) make an independent assessment of the situation using staff with expertise in the specific area noted by the Partnership, (ii) should the City determine that the event organizer has not restored the venue and surrounding area to its pre-event condition and in accordance with the Special Events Ordinance, City shall cause the situation to be remedied in a timely manner and to the mutual satisfaction of the City and the Partnership, in accordance with §22.4022(c) of the San Diego Municipal Code.

10. Sidewalk Maintenance: Regularly maintain in good condition all sidewalks consistent with City Council Policy 200-12. This Policy places the responsibility for replacement of all sidewalks on the abutting property owner unless some act or property of the City has damaged the sidewalk. The City does not maintain decorative pavement or sidewalks above basements. If an unsafe sidewalk condition exists and is reported to the City's Street Division (619-527-7500 OR e-mail www.sandiego.gov and select Request a Street Repair - either means of reporting provides a "standard notification number" confirming that the report was made and received), the City will take action to temporarily mitigate the potential hazard and notify abutting property owners of their responsibility to permanently repair/replace the sidewalk. [Transportation and Storm Water Department: Street Division]

11. Public Parks and Water Features: The City will regularly clean and maintain or cause to be cleaned and maintained all public parks in the downtown area. With respect to maintenance of the Children's Park public water feature, the City shall contribute 50% of the contracted maintenance costs and the Partnership will fund the other 50% and contract for and oversee satisfactory maintenance of the public water feature. [Park & Recreation Department: Community Parks 1]

12. Public Restrooms: Satisfactorily clean and maintain or cause to be cleaned and maintained on a daily basis existing City public restrooms and other public restrooms which the City has agreed separately to maintain which are located in the PBID, including but not limited to these locations: 202 C Street, 14th and K Street, Park Boulevard and Market Street, and adjacent to Gaslamp Square Park. [Park & Recreation Department: Community Parks 1]

13. Illegally Dumped Objects in Public Rights of Way: Remove or cause to be removed all illegally dumped trash, furniture, appliances, office equipment, construction materials and other items that are not the Partnership's responsibility under this Agreement. [Environmental Services Department: Waste Reduction & Disposal Division]

14. Contact Information: For each of the Partnership obligations set forth in Exhibit B to the Agreement, the City shall identify (including phone and e-mail contact information) the person(s) to whom the Partnership's reports of problems, issues, or questions should be directed.

The Parties agree that if the level or frequency any of the City's services falls below its baseline, the Partnership will not be obligated to correspondingly increase its level of such services hereunder. The Partnership may assume provision of services reduced or eliminated by the City in accordance with and subject to the MDP and all applicable laws.

Exhibit B
Downtown San Diego Partnership Enhanced Services

Pursuant to the Operating and Management Agreement for the Downtown Property and Business Improvement District (Agreement) to which this document is attached as Exhibit B the Downtown San Diego Partnership (Partnership) agrees to undertake, at the expense of the Downtown Property and Business Improvement District (PBID), the "Services" described in the PBID Engineer's Report and Management District Plan (MDP) accepted by the City Council and the following enhanced services, obligations and responsibilities. Exhibit A of the Agreement sets forth the City-provided Baseline Services. Exhibit A may change from year to year throughout the Term of the Agreement. In the event that Exhibit A is amended to include Services described in the MDP and listed on this Exhibit B, Partnership shall not provide such Services identified in Exhibit A.

1. Litter Removal: Remove litter and debris from public sidewalks, curbs, gutters and landscaped public areas within PBID boundaries (other than parks), six (6) days per week.

2. Unlawful Disposal of Rubbish: Remove such Rubbish (as that term is defined in San Diego Municipal Code section 54.0202, but excluding machinery and vehicle parts), dumped or deposited on public sidewalks, as Partnership staff is able to remove using customary Partnership equipment, as soon as practicable under the circumstances. If the Partnership staff cannot remove the Rubbish in the manner described herein (for reasons that may include, but are not limited to the size or weight of an item, or other hazardous characteristics), the Partnership staff shall promptly advise the appropriate City department of the nature and location of the illegal dump/deposit, using the contact information provided by the City.

3. Graffiti: Remove graffiti and stickers that Partnership staff finds on public property in the course of performing their regular duties under the Agreement, except for graffiti and stickers found on street signs, signal boxes and poles. Report such graffiti and stickers to the appropriate City department contact, as identified by the City, or to the City-designated liaison.

4. Enhanced Sidewalk Services: Clean (including, but not limited to, power washing, gum removal) designated sidewalks in each of the PBID benefit zones, over and above those cleaning services provided by the City, pursuant to a schedule to be delivered to the City. The Partnership shall not be responsible for the maintenance, repair or replacement of any sidewalks, nor shall the Partnership have any responsibility for cleaning, maintaining, repairing or replacing tree planters located throughout the downtown area unless such responsibility is accepted in writing by the Partnership and is in compliance with the provisions of the MDP.

5. Sidewalk Maintenance: Regularly maintain in good condition, and repair as needed, all sidewalks previously improved using PBID funds. Consistent with City Council Policy 200-12, and as a baseline service provided by the City, all unsafe sidewalk conditions which come to the attention of the City will be patched with asphalt to eliminate tripping hazards. If the Partnership prefers to address a particular unsafe sidewalk condition using Portland Cement Concrete, or enhanced brick, tile, or other material that is not the baseline standard at the time of the improvement, the Partnership may do so, subject to any necessary permits or approvals, provided

that it informs the City of such preference prior to asphalt repair work by the City, regularly maintains the sidewalk improvement in good condition, and repairs the sidewalk improvement as needed.

6. Trash Receptacles: Empty public trash receptacles as designated in the streetscape manual, located on public sidewalks throughout downtown, pursuant to a schedule developed in coordination with the City. Install, clean, empty, and repair PBID-owned trash receptacles as needed.

7. Tree Maintenance: Pursuant to a schedule provided to the City, water, fertilize, trim, root prune, and otherwise maintain all trees and ensure that the trees do not cause damage to adjacent surroundings so as to create a hazard, such as a sidewalk tripping hazard, in the public rights-of-way throughout Downtown, except for those trees that are the responsibility of the City or other third parties. Tree maintenance contractors selected by the Partnership shall comply with the City's standards for work zone traffic control in connection with tree maintenance. The Partnership shall not be responsible for the removal or replacement of damaged, dead, or dying trees however, the Partnership may install a replacement tree where the City will only remove a damaged, dead, or dying tree, if the Partnership assumes ongoing responsibility to water, fertilize, trim, root prune, and otherwise maintain that tree and documents such acceptance of responsibility using the prescribed form provided by the City. The Partnership may also plant trees in locations that do not have existing trees and assume ongoing responsibility to water, fertilize, trim, root prune, and otherwise maintain newly planted trees but must document such installation and acceptance of responsibility using the prescribed form provided by the City. If the City does not provide palm tree maintenance services in a timely fashion then, the Partnership may do so.

8. Street Medians: Conduct weekly litter removal and bi-weekly landscaping services of street medians located on Broadway and Market Streets and Park Boulevard. Landscaped areas located immediately adjacent to sidewalks, except those located on private property, shall be serviced as needed.

9. Special Events: For those Special Events defined in paragraph 8 of Exhibit A the Partnership shall provide timely advice and recommendations (that provides for the protection and preservation of public property including but not limited to signs, poles, trees, tree grates, landscaping, irrigation systems, trash receptacles, and water features) to the event organizer, and propose permit language to the City regarding the proposed plans; and may coordinate pre-event and post-event walk-through inspections, coordinating such inspections directly with the event organizer, and shall invite a representative of the City to participate in all such meetings/inspections; however, the decision of the City not to participate shall not prevent the Partnership from conducting such meetings/inspections, The Partnership shall further ensure that its duties under this Exhibit B with respect to the condition of the public right-of-way within the venue and surrounding area (200 feet around event perimeter) are properly and timely carried out prior to the event.

The Partnership acknowledges that the event organizer shall not be required to restore the venue and surrounding area above and beyond the existing condition of the venue at such time the

event organizer assumes responsibility for the area. However, if the Partnership is not satisfied with the restoration of the venue and surrounding area following the conclusion of the event's permitted time, the Partnership shall:

(A) first notify the event organizer of the defaults and attempt to achieve an acceptable remedy to the situation within a 24-hour time period;

(B) should a remedy not be achieved, notify the City of San Diego Office of Special Events that a remedy to the situation has not been achieved.

10. Public Parks and Water Feature: The Partnership will contract for and oversee satisfactory maintenance of the public water feature located in Children's Park. Water feature contracts will be managed so as to ensure prompt repair and replacement of the water feature, and any components thereof, as needed to maintain the water feature in good working order and to minimize threats to public health or safety. Maintenance for the water feature includes, but is not limited to, inspection of the basin, vacuuming and sweeping of the basin, removal of debris and maintaining the chemical balance and water quality. The City shall contribute the 50% of the contracted maintenance costs for Children's Park water feature.

Upon the opening of the park located on the block bound approximately by 13th Street, 15th Street, F Street and G Street, the Partnership will provide park maintenance. Park maintenance will include landscaping maintenance.

11. Lighting: The Partnership will maintain any decorative lighting installations such as but not limited to string lighting. The Partnership will remove graffiti, stickers, and flyers from light poles and paint light poles as needed. The Partnership will install and maintain midblock lighting features. Such installations and assumption of responsibility for maintenance shall be documented using the prescribed form provided by the City.

12. Physical Improvements: Install and clean, repair and otherwise maintain as needed: trees, outdoor seating, parklets, pedestrian plazas, cycling amenities, planter boxes, hanging baskets, pet waste stations, and placemaking signage and document such installation and assumption of responsibility for maintenance using the prescribed form provided by the City.

13. Disorder and Nuisance Abatement: The Partnership will provide safety ambassadors throughout the District on a regular schedule. Periodically evaluate and adjust schedule as needed to ensure efficient, effective service provision. Provide an integrated outreach team to address chronic issues of disorder and nuisance behavior. Provide additional ambassadors and a program manager to implement more intensive services on CEP parcels.

14. Business Attraction and Retention: The Partnership will fund efforts to retain and attract tenants for Commercial Enhancement Program (CEP) parcels. The Partnership will conduct research, create a database of CEP parcels and rentable space, conduct owner and tenant outreach, implement a top 50 tenant program, survey current and former tenants, and develop print and online tools to convey information on buildings located on CEP parcels. Only CEP parcels will be featured in these efforts.

The Partnership's obligations under this Agreement extend only to the "Services" described in the PBID Engineer's Report and Management District Plan accepted by the City Council and to those specific tasks expressly described herein, and the omission of any other task means that such task is not the legal or operational responsibility of the Partnership and shall not be construed as intending to impose such obligation, either directly or indirectly, on the Partnership. The Partnership shall not interfere with the City's ability to identify and address City baseline services, including those identified in Exhibit A.