CITY OF SAN DIEGO

BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT

FISCAL YEAR 2019

This Business Improvement District Management Agreement ("**Agreement**") is dated as of July 1, 2018 ("**Effective Date**"), and is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and THE PACIFIC BEACH COMMUNITY DEVELOPMENT CORPORATION, a California non-profit public benefit corporation ("**Manager**"). Manager and City are sometimes referred to in this Agreement, individually, as a "**Party**" and, collectively, as the "**Parties**."

NOW THEREFORE, in consideration of the covenants, conditions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. **PURPOSE AND INTENT**. City Ordinance O- 18542 ("**District Ordinance**") established a parking and business improvement area within City known as the Pacific Beach Business Improvement District ("**District**"). City collects Assessments (defined in Section 2) from specified businesses located within the District to be used for the promotion and improvement of the District. Pursuant to City Council Policy 900-07, the City Council annually designates an entity to be the advisory board for the District and carry out the Activities (defined in Section 2) of the District in accordance with a City Council approved annual Budget (defined in Section 2). City believes that Manager has experience in small business affairs within the District, is representative of and its membership includes all of the businesses assessed by the District, and is qualified and willing to perform the obligations of Manager under this Agreement. Manager's performance of its obligations under this Agreement benefits the businesses assessed by the District.

2. **DEFINITIONS**. For the purposes of this Agreement, the terms listed below are defined as follows:

2.1. Activities. The improvements and activities within the District described in the Budget and all of Manager's obligations described in this Agreement.

2.2. Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

2.3. Annual Report. Defined in Section 9.2.

2.4. Assessments. All funds collected by City or Manager from businesses located within the District under the authority of the District Ordinance.

2.5. Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 of the United States Code or any other or successor State or Federal statute relating to

assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.6. Budget. The annual budget report for the District approved by the City Council for each specific Fiscal Year during the Term.

2.7. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.8. CDBG. Defined in Section 9.7.

2.9. City. Defined in the initial paragraph of this Agreement.

2.10. City Parties. Collectively, City, the City Council, and all City elected or appointed officials, employees, agents and attorneys.

2.11. City Party. Individually, City, the City Council, or any City elected or appointed official, employee, agent or attorney.

2.12. City Representative. Defined in Section 12.1.

2.13. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if a Party improperly fails to provide a defense for another Person entitled to indemnity under this Agreement or provides such defense under a reservation of rights, then Legal Costs of the Person) and any judgment.

2.14. Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests in any entity, at any tier of ownership, by contract or otherwise. "**Controlling**" and "**controlled**" shall have correlating meanings.

2.15. County. County of San Diego, California.

2.16. Default. A Monetary Default or a Non-Monetary Default.

2.17. District. Defined in Section 1.

2.18. District Ordinance. Defined in Section 1.

2.19. EDD. City's Economic Development Department.

2.20. Effective Date. Defined in the initial paragraph of this Agreement.

2.21. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that owns or holds any ownership or equity interest in a Person.

2.22. Event of Default. The occurrence of any one or more of the following:

2.22.1. *Monetary Default*. A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount, or the bond, surety or insurance not provided;

2.22.2. *Bankruptcy or Insolvency*. A Party admits in writing that the Party is unable to pay its debts as they become due or a Party becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Party's assets or the Party's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days after commencement);

2.22.3. *Transfer*. The occurrence of Transfer of any or all of Manager's rights or obligations under this Agreement, whether voluntarily, involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement;

2.22.4. *Violation of Section 4.10*. Any violation of the provisions of Section 4.10; or

2.22.5. *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 2.22.2, Section 2.22.3, or Section 4.10, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.23. Extended Term. Defined in Section 3.1.

2.24. Federal. Relating or pursuant to the authority of the federal government of the United States of America.

2.25. Fiscal Year. Each time period starting on July 1 and ending on the immediately following June 30.

2.26. GAAP. Generally Accepted Accounting Principles.

2.27. GAGAS. Generally Accepted Government Audit Standards.

2.28. Government. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, City, district, or otherwise) whether now or later in existence.

2.29. Indemnify. Where this Agreement states that any Party shall "Indemnify" any Person from, against, or for a particular Claim, that the Party shall indemnify the Person and defend and hold the Person harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

2.30. Initial Term. Defined in Section 3.

2.31. Intellectual Property. All materials and deliverables subject to copyright protection that arise, or are developed in performance of this Agreement, including editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, Photostats, drawings, and other production materials, and for information technology procurements, executable code, source code, fixes, patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials.

2.32. Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to this Agreement or otherwise relating to any Party's rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.33. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

2.34. Management Grant. Defined in Section 6.1.

2.35. Manager. Defined in the initial paragraph of this Agreement.

2.36. Manager Parties. Collectively, Manager and its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners and Affiliates.

2.37. Manager Party. Individually, Manager or its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners or Affiliates.

2.38. Manager Representative. Defined in Section 12.2.

2.39. Mandatory Assistance. Defined in Section 17.

2.40. Member Business. A business located within the District that is subject to paying Assessments pursuant to the District Ordinance.

2.41. Monetary Default. Any failure by a Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

2.42. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.43. Notice. Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing.

2.44. Notify. To give a Notice.

2.45. Operating Manual. City's "FY 2011 Update of the Operating Manual for Economic Development Services Programs," as may be amended from time to time, containing procedures for fiscal management and accountability.

2.46. Other Revenue. Defined in Section 7.

2.47. Party. Defined in the initial paragraph of this Agreement.

2.48. Parties. Defined in the initial paragraph of this Agreement.

2.49. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.50. Reconciliation Report. Defined in Section 9.1.

2.51. Records. All administrative or financial records relating to the District, Assessments, Activities, SBEP grant funds, or this Agreement that are prepared or gathered by Manager, including books, papers, invoices, receipts, accounting records, reports, financial disclosures, audits, other disclosures, certifications, work product, and any other documents, data or records.

2.52. Reporting Period. Each calendar month during the Term.

2.53. Residual Assessments. Defined in Section 5.1.

2.54. SBEP. Defined in Section 6.1.

2.55. SDMC. San Diego Municipal Code.

2.56. State. The State of California.

2.57. Subcontract. A contract between Manager and a Subcontractor.

2.58. Subcontract Activity Report. Defined in Section 11.5.

2.59. Subcontractor. Any Person with which Manager contracts for the performance of services or the supplying of materials that will be paid for in whole or in part with Assessments received by Manager pursuant to this Agreement.

2.60. Subcontractor List. A list of the names of and contact information for all Subcontractors Manager has hired or intends to hire in connection with performing Activities under this Agreement.

2.61. Term. Defined in Section 3.1.

2.62. Third Person. Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.63. Transfer. Regarding any property, right or obligation, any of the following, whether by operation of Law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" or "(c)" of this Section 2.63, shall be deemed a Transfer by the Person issuing such Equity Interests, even though such Person is not technically the transferor.

3. **TERM**. This Agreement shall commence on the Effective Date, subject to approval by the City Attorney in accordance with San Diego Charter section 40, and shall continue until June 30, 2019, subject to potential extension as provided in Section 3.1 and the other rights of the Parties under this Agreement ("**Initial Term**").

3.1. Term Extension. The Initial Term may be extended in individual Fiscal Year durations up to a maximum of four (4) separate times, with approval of each such extension by the City Council (each, an "**Extended Term**"). Only one Extended Term may be approved and entered into by the Parties during the Initial Term and each Extended Term (if any). Under no circumstance shall the Term (defined below in this Section 3.1) exceed five (5) years. The beginning of each Extended Term is subject to all of the following conditions: (a) Manager is not in Default on the last day of the Initial Term or the immediately preceding Extended Term, as applicable; (b) the Extended Term has been approved by the City Council; and (c) the Manager Representative has approved the Extended Term. The Initial Term and each Extended Term entered into in accordance with this Section 3 are sometimes, collectively, referred to in this Agreement as the "**Term**."

3.2. Expiration. On expiration of the Term, this Agreement and the rights and obligations of the Parties under this Agreement shall terminate, except those rights or obligations expressly surviving expiration or termination of this Agreement.

4. SPECIFIC MANAGER OBLIGATIONS.

4.1. District Management. Manager shall perform all Activities necessary for the proper management of the District in a professional and prudent manner and in accordance with all Laws and the Budget. More specifically, Manager shall do all of the following:

4.1.1. *Objectives*. Establish objectives for evaluating and strengthening the existing businesses within the District and explore methods of attracting new businesses into the District;

4.1.2. *Promotional Strategy*. Develop a general promotional strategy tailored to the businesses within the District;

4.1.3. *Liaison*. Establish a liaison with agencies conducting business revitalization activities and explore means of supporting public improvement projects within the District;

4.1.4. *Banners and Banner Districts*. Except to the extent that the City has provided, whether before or after the Effective Date, authority to another Person to manage such banner district or banners, manage any banner district or banners within the District in accordance with the City's Development Services Department policies, City Council adopted ordinances and resolutions, and any other applicable Laws, in each instance, whether in effect on the Effective Date or adopted or enacted after the Effective Date; and

4.1.5. *Newsletter*. Distribute a newsletter (in electronic and/or print media format) to every Member Business at least once every three months that includes, among other things, a directory of Manager's current Board of Directors.

4.1.6. *Performance Metrics*. Collect data on all of the following: (a) ratio of annual Assessment amount to total annual Budget; (b) all net gains and losses in businesses; (c) all net gains and losses in jobs; (d) ground floor vacancy rate; and (e) average rental rate per square foot.

4.2. Procurement of Goods and Services. All procurement of goods and services by Manager in administration of the District that obligates or will result in the expenditure of any Assessments or SBEP funds shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to City's procurement of such goods and services, except that the threshold amounts shall be as listed below and all quotes or pricing must be obtained in writing.

4.2.1. *Agreement Duration*. Agreements for procured goods or services may not exceed five (5) years, nor may they be renewed, unless renewal was included in the original solicitation and does not result in the total term of the agreement exceeding five (5) years. A simple extension of the term of an agreement that does not result in an obligation of Manager to pay additional monies to the contractor is not considered a renewal of an agreement. However, no renewal or extension may result in a term exceeding five (5) years.

4.2.2. *Bid Requirements*. Manager shall obtain the following price bids before awarding a contract that will be funded in whole or in part from Assessments: (a) when a contract provides for an expenditure equal to or less than $10,000 in total, Manager may award the contract

based on, at least, two (2) competitive written price bids; (b) when a contract provides for an expenditure greater than $10,000, but equal to or less than $50,000 in total, Manager may award the contract based on written price quotations from, at least, five (5) potential sources and, at least, three (3) competitive written price bids; or (c) when a contract provides for an expenditure greater than $50,000, but equal to or less than $1,000,000 in total, Manager may award the contract only after advertising it for a minimum of one (1) day in the City Official Newspaper at least ten (10) days before bids or proposals are due.

4.3. Membership. Manager acknowledges and agrees that because Manager will be expending public funds in the form of Assessments received from Member Businesses, Membership of the Manager organization shall include all Member Businesses. Also, Manager shall hold an annual membership meeting and provide notice of the annual membership meeting to all Member Businesses, at least sixty (60) days before the date scheduled for the annual membership meeting. Manager shall annually elect its Board of Directors through either a mailed ballot election prior to the annual membership meeting or an in-person election held at the annual membership meeting. All Member Businesses shall be eligible to vote in the Board of Directors election; provided, however, that Member Businesses that are delinquent in payment of Assessments are not required to be eligible to vote in the Board of Directors election. If a mailed ballot election is used for the Board of Directors election, the results of the mailed ballot election shall be announced at the annual membership meeting. Manager shall provide its Board of Directors roster (names and business affiliations) to the City Representative in accordance with **EXHIBIT C,** Section 10.3.

4.4. Non-Profit Status. Manager shall at all times during the Term be a Federal and State non-profit corporation.

4.5. Open and Public Meetings. Manager acknowledges and agrees that because Manager will be expending public funds in the form of Assessments and SBEP grant funds under this Agreement, all portions of meetings of Manager's Board of Directors at which this Agreement, Activities, Assessments, or SBEP grant funds are discussed shall be conducted in accordance with the Ralph M. Brown Act, California Government Code sections 54950-54963.

4.6. Public Records. Manager acknowledges and agrees that because Manager will be expending public funds in the form of Assessments and SBEP grant funds under this Agreement, all records produced by or on behalf of Manager relating to this Agreement, Activities, Assessments, or SBEP grant funds are subject to the California Public Records Act, California Government Code sections 6250-6276.48.

4.7. District Website. Manager shall maintain an official District website and shall post on such official District website all of the following: (a) Manager's Board of Directors roster (names and business affiliations); (b) all regular Board of Directors and committee meeting agendas; (c) all approved Board of Directors and committee meeting minutes; (d) Manager's bylaws; (e) all annual audits, reports and financial statements or disclosures prepared by Manager or provided by Manager to City pursuant to Section 9; and (f) all contracts for which Manager will expend $5,000 or more of Assessments, including notation of the total number of bidders for each such contract in the top right hand corner of the posted contract. All items required to be posted

on the official District website pursuant to this Section 4.7 shall be maintained on the website for a minimum of five (5) years.

4.8. Promotional Materials. Manager shall include the following language in all promotional brochures, newsletters, advertising, Internet web sites, fact sheets, news releases, and other promotional materials relating to the District: "Partially funded by The City of San Diego's Small Business Enhancement Program." Manager shall submit a final copy of any and all promotional materials relating to the District to the City Representative.

4.9. Compliance with Law. Manager shall comply with all Laws in performing this Agreement. Also, Manager shall immediately comply with all directives issued by City, or City's duly authorized representatives, under authority of any Law.

4.10. Prevailing Wage Law Compliance. Pursuant to San Diego Municipal Code section 22.3019, construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair or maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000 is subject to California Labor Code sections 1720 through 1861 and in performing or funding any and all such work, Manager and its Subcontractors shall comply with California Labor Code sections 1720 through 1861 and the requirements of **EXHIBIT D** attached to this Agreement.

4.11. City Municipal Code, Regulation, and Policy Compliance. Manager shall comply with City's contract provisions set forth in **EXHIBIT C** attached to this Agreement.

4.12. Independent Contractor. Manager acknowledges and agrees that Manager is an independent contractor and not an agent or employee of City. Any provision of this Agreement that may appear to give City a right to direct Manager concerning the details of performing its obligations under this Agreement, or to exercise any control over such performance, shall mean only that Manager shall follow the direction of City concerning the end results of the performance. Manager shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on behalf of or against City, whether by contract or otherwise.

4.13. Operating Manual. Manager acknowledges receipt of and agrees to comply with the Operating Manual, including those provisions related to fiscal accountability, eligible and ineligible expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, bonding requirements, and other administrative functions. Any desired changes to the procedures set forth in the Operating Manual must be requested by Manager in writing and approved by City in writing, in City's sole and absolute discretion, before such changes may be implemented.

5. ASSESSMENT ADVANCES.

5.1. Disbursements. City will calculate and disburse Assessments to Manager up to the total Budget amount for each Fiscal Year during the Term pursuant to the procedures described in **EXHIBIT E** attached to this Agreement. The total Assessments provided to Manager each Fiscal Year under this Agreement shall not, under any circumstances, exceed the total Budget for that Fiscal Year. If Assessments collected by District (through either City or Manager) in a Fiscal year exceed the total Budget amount for that Fiscal Year (such excess amount being "**Residual**

Assessments"), the Residual Assessments will be available for budgeting for Activities during the immediately following Fiscal Year, subject to City Council approval of the Budget for the immediately following Fiscal Year and extension of the Term to cover such Fiscal Year.

5.2. Manager Collections. If Manager collects Assessments directly from District businesses, Manager shall separately account to City for such Assessments and shall only use such Assessments to pay for performance of Activities authorized in the Budget. All Assessments collected by Manager directly from District businesses will reduce the total amount of Assessments that will be disbursed to Manager by City pursuant to the applicable Fiscal Year Budget on a dollar for dollar basis.

5.3. Submittals. If Manager fails to timely submit to City any report, financial statement, audit or other matter required to be submitted by Manager to City pursuant to Section 9, City may stop future Assessment disbursements until such time as the overdue item is received and determined by City to comply with the requirements of this Agreement. Nothing in this Section 5.3 shall waive or prevent City from exercising any or all other rights or remedies that may be available to City under this Agreement, at law or in equity for an Event of Default resulting from Manager failing to timely submit to City any item required to be submitted by Manager to City pursuant to Section 9.

5.4. Assessment Expenditure. Assessments may only be expended on Activities and in amounts authorized in the Budget for the applicable Fiscal Year. Any expenditure inconsistent with the Budget, or not supported with proper documentation, as described in **EXHIBIT E** attached to this Agreement, shall be considered an ineligible expenditure. Upon determining that Manager has made an ineligible expenditure, City may stop future Assessment disbursements or reduce future Assessment disbursements. Nothing in this Section 5.4 shall waive or prevent City from exercising any or all other rights or remedies that may be available to City under this Agreement, at law or in equity for an Event of Default resulting from Manager making an ineligible expenditure of Assessments.

5.5. Unexpended Assessments. If Manager is holding any unexpended Assessments at the end of a Fiscal Year, Manager shall program such Assessments for expenditure on Activities authorized in the Budget for the immediately following Fiscal Year, subject to City Council approval of the Budget for the immediately following Fiscal Year and extension of the Term to cover such Fiscal Year.

5.6. Adjustments between Budget Categories or Line Items. Manager may request adjustments between expenditure categories in the Budget or between line items in the Budget by submitting a written request to the City Representative stating the justification(s) for the adjustment. The City Representative may approve reasonable adjustments (where the sum of the expenditure category adjustments does not exceed 20% of the overall Budget or where the adjustments are 20% or less of the affected line item that is being reduced). Manager shall not expend any additional funds in any affected cost category or line item unless and until Manager receives prior written approval of the adjustments from the City Representative. No Manager request for adjustments between cost categories or line items will be approved between April 30 and July 1 of any Fiscal Year during the Term.

6. **SMALL BUSINESS ENHANCEMENT PROGRAM GRANT FUNDS.**

6.1. Management Grant. City may annually advance "Small Business Enhancement Program" ("**SBEP**") funds to Manager, in an amount determined by the City Representative, for general overhead expenses of managing the District ("**Management Grant**"). The amount of the annual Management Grant to be provided to Manager will be determined through a calculation annually performed by the City Representative, in the City Representative's sole and absolute discretion, based on the number of businesses in the District registered with the City Treasurer for a City business tax certificate. Management Grant funds are typically disbursed to Manager during the first calendar quarter of the applicable Fiscal Year.

6.2. Bookkeeping Grant. Additionally, City may annually reimburse a maximum of $3,000 of SBEP funds to Manager to pay expenses of accounting services and staffing for preparing and maintaining accounting records, submitting documentation required by this Agreement, and administering payroll and related taxes and benefits related to District management each Fiscal Year.

6.3. Technical Assistance Grant. Additionally, City may annually reimburse a maximum of $2,000 of SBEP funds to Manager to pay any of the following expenses: (a) accounting services; (b) website public notice compliance assistance; (c) employee handbook updates; (d) upgrading Microsoft Office, Adobe and, every other year, QuickBooks computer software; (e) computer or office equipment (City will tag all property as property of City); (f) professional grant writing assistance; (g) facilitating retreats of board members and staff; (h) District memberships in professional organizations or associations directly related to District's operations (in each case, subject to approval by the City Representative); or (i) conference registration (travel, lodging, food or drink are not allowable expenses).

6.4. City Fees and Services Offset. Pursuant to Council Policy 900-15, Manager may request reimbursement of City fees paid in performing the Activities authorized in the Budget by completing the City required form and submitting the completed form to the City Representative, with proof of payment by Manager of the eligible City fee(s) and, if applicable, a copy of each related City-issued permit. Reimbursement for any such City fees is provided from a fixed pool (the total amount of the pool being determined in the City Representative's sole and absolute discretion) of SBEP funds held by City, with a maximum annual reimbursement amount available to Manager determined in the City Representative's sole and absolute discretion, not to exceed $20,000. Notwithstanding the maximum reimbursement amount determined to be available to Manager in a particular Fiscal Year, the maximum reimbursement amount for City fees under this Section 6.4 each Fiscal Year shall not exceed 90% of the allowed amount of City fees.

6.5. SBEP Funds Audit. By accepting SBEP funds from City, Manager authorizes City to audit Manager's use of all such SBEP funds and agrees to provide City with a full accounting of SBEP funds provided to Manager each Fiscal Year.

7. **OTHER REVENUE.** If Manager collects any funds other than Assessments ("**Other Revenue**"), such Other Revenue shall not be subject to the provisions in this Agreement, unless Manager uses or obligates Assessments towards: (a) any portion of the proposed activity or improvement to which Manager proposes the expenditure of Other Revenue; or (b) any Manager

staff time or resources paid for with Assessments or SBEP grant funds (in whole or in part) are used for the proposed activity or improvement to which Manager proposes the expenditure of Other Revenue, including facilitating committee or Board of Directors discussions, implementing the proposed activity or improvement, soliciting goods or services necessary for implementation of the proposed activity or improvement, or accounting or reporting on the proposed activity or improvement. Notwithstanding the immediately preceding sentence, Manager's expenditure of Assessments or SBEP grant funds for generating reports about collection or expenditure of Other Revenue in accordance with the requirements of this Agreement shall not, by itself, subject such Other Revenue to the provisions of this Agreement.

8. **INSURANCE.** Prior to the Effective Date, Manager shall obtain all insurance coverage required in **EXHIBIT B** attached to this Agreement and deliver to City written certificates or policies of insurance evidencing such insurance coverage. Manager shall not perform any Activities, unless and until evidence of all insurance coverage required to be carried by Manager under this Section 8 has been submitted to and approved by the City Representative. Manager shall maintain all of the insurance coverage required to be obtained under this Section 8 throughout the Term.

9. **REPORTS AND AUDITS.**

9.1. Reconciliation Reports. Manager shall submit a monthly report to City for each month during the Term summarizing Manager's Activities performed during the applicable month and detailing Manager's revenue and expenditures during the applicable month (each, a "**Reconciliation Report**"). Each Reconciliation Report shall be prepared by Manager and submitted to City in accordance with the requirements of **EXHIBIT E** attached to this Agreement.

9.2. Annual Report. Manager shall submit an annual report to City for each Fiscal Year during the Term summarizing Manager's Activities performed during the applicable Fiscal Year and detailing Manager's revenue and expenditures during the applicable Fiscal Year (each, an "**Annual Report**"). Each Annual Report shall be delivered to City and distributed by mail to each Member Business within 150 days after the end of each Fiscal Year.

9.3. Annual Budget. On or before each February 1 during the Term, Manager shall deliver a draft Budget for the immediately following Fiscal Year to City. On or before each March 1 during the Term, Manager shall deliver a final Budget for the immediately following Fiscal Year to City. Each draft and final Budget shall include: (a) budgeted amounts; (b) narrative describing the proposed Activities within the District during the applicable Fiscal Year; (c) the estimated costs, by category, of performing all Activities planned for the applicable Fiscal Year; (d) any estimated amount of surplus or deficit in Assessments (anticipated to be held by City, and separately, any unreconciled Assessments anticipated to be held by Manager) to be carried over from the then current Fiscal Year into the immediately following Fiscal Year; and (e) any anticipated Other Revenue to be received by Manager in the immediately following Fiscal Year that will be expended on Activities. Each Budget shall be formatted using a template provided by City.

9.4. Audit. Manager shall have an audit conducted in accordance with GAGAS within one hundred fifty (150) days after the end of the applicable Fiscal Year or Fiscal Years. Manager

shall submit a copy of each such audit and any management letters issued by the auditor for each such audit to City within one hundred fifty (150) days after the end of the applicable Fiscal Year or Fiscal Years. If Manager is subject to an audit from a source other than City, Manager shall provide a copy of the audit to City within thirty (30) calendar days after receipt of the audit. Manager shall provide in any agreement it enters into with an audit firm for performance of any and all audits referenced in this Agreement that the audit firm shall provide City access to the working papers of the auditor(s) who prepare(s) the audit(s), that Manager waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release to City, any and all information obtained or utilized by such audit firm as the basis of any audit report issued by the audit firm.

9.5. Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable financial activity by Manager, City, in its sole and absolute discretion, shall have the right to immediately suspend this Agreement, in whole or in part, to further investigate such matter or pursue any other rights or remedies for such Default available to City under this Agreement, at law or in equity.

9.6. Cooperation. Manager shall fully cooperate with City and any other auditors in any review or investigation of Manager's conduct or action(s) relating to this Agreement or money received pursuant to this Agreement. Failure by Manager to so cooperate shall constitute an Event of Default by Manager. Manager's failure to provide required financial statements, audits or other information, notwithstanding expiration of the Term or other termination of this Agreement, shall be an Event of Default by Manager.

9.7. CDBG Funds. If Manager has a separate agreement with City for receipt and use of Federal Community Development Block Grant ("**CDBG**") funds, then the financial management and audit provisions of that agreement shall control Manager's receipt and use of CDBG funds.

10. RECORDS.

10.1. Maintenance, Inspection and Photocopying. Manager shall maintain all Records during the Term and the Retention Period (defined in Section 10.3). At any time during normal business hours and as often as requested, Manager shall permit City or any of City's duly authorized representatives to inspect and photocopy, at a reasonable location within the County (e.g., the Manager's office), all Records for the purposes of making audits, examinations, excerpts, or transcriptions, or monitoring and evaluating Manager's performance of its obligations under this Agreement. Upon any request by City or any of City's duly authorized representatives for any Records, Manager shall submit exact duplicates of the originals of the requested Records to the requester. City may retain copies of Records, if such retention is deemed necessary by City, in its sole and absolute discretion. If Manager is unable to make any Records available for inspection within the County, then Manager shall pay all of City's travel-related costs to inspect and photocopy the Records at the location where the Records are maintained.

10.2. Ownership of Records. All Records shall be the property of City. City's ownership of the Records includes the use, reproduction, or reuse of the Records, and all incidental rights, whether or not the activity for which the Records were prepared occurred. No Records shall be

shown to any other public or private Person, except as authorized by City in writing, or where such Records are subject to disclosure pursuant to the California Public Records Act or other Law, as determined by the City Attorney.

10.3. Records Retention Period. Manager shall retain originals of all Records for at least five (5) years after expiration or termination of this Agreement and Manager performing all of its obligations under Section 15 ("**Retention Period**"). All Records shall be kept at Manager's regular place of business in the County. At any and all times during the Retention Period, Manager shall permit City or any of City's duly authorized representatives to inspect and photocopy any and all Records. After expiration of the Retention Period, Manager shall provide City with thirty (30) days' Notice of its intent to dispose of any Records. Manager shall provide any and all Records to City upon Notice from City requesting the Records during this thirty (30) day time period.

11. **SUBCONTRACTOR LIST AND SUBCONTRACTS**. Within seven (7) days after the Effective Date, Manager shall provide City with each of the following: (a) a Subcontractors List; and (b) a copy of all Subcontracts entered into; (c) a written statement describing the justification for each Subcontract; and (d) an itemization of all costs for each Subcontract. Manager shall procure all Subcontracts pursuant to the procedures in Section 4.2. Manager shall maintain documentation of the process used to procure each Subcontract showing compliance with Section 4.2 and shall provide a copy of all such documentation to City within ten (10) days after Notice from City requesting such documentation. Manager shall not employ, award any contract to, engage the services of, or pay any Subcontractor during any period of Federal, State, or City debarment, suspension, or ineligibility of the Subcontractor, when Manager has notice of such debarment, suspension, or ineligibility.

11.1. Adding Subcontractors. If Manager identifies a need for additional or substitute Subcontractor services, Manager shall provide City with each of the following within ten (10) days after the date of any Subcontract for such services: (a) a copy of the Subcontract; (b) a written statement of the justification for the additional or substitute Subcontractor services; (c) an itemization of all costs for the additional or substitute Subcontractor services; and (d) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional or substitute Subcontractor services.

11.2. Required Language for Subcontracts. Manager shall ensure that all Subcontracts entered into in connection with this Agreement contain language requiring Subcontractors to comply with all applicable Laws and all notices issued by City under the authority of all current or future Laws.

11.3. Subcontractor Insurance. Each Subcontractor shall obtain all insurance coverage required of Manager under this Agreement. Each Subcontractor shall maintain, in full force and effect all such insurance coverage while any and all work is performed by the Subcontractor in connection with this Agreement. No Subcontractor shall begin work on a Subcontract until all insurance required of the Subcontractor under this Section 11.3 has been obtained and evidence of such insurance coverage is approved by City.

11.4. Indemnity of City. If City is made a party to any judicial or administrative proceeding to resolve a dispute between Manager and a Subcontractor, Manager shall Indemnify City pursuant to Section 18 relating to such proceeding.

11.5. Subcontract Activity Report. Within ten (10) days after Notice from City requesting such a report, Manager shall provide to City: (a) statistical information (as described in the City's "**Subcontract Activity Report**" form), including the amount of subcontracting provided by firms during the time period covered by the Subcontract Activity Report; and (b) an invoice from each Subcontractor listed in the Subcontract Activity Report.

12. **CITY AND MANAGER REPRESENTATIVES.**

12.1. City Representative. The Person identified in **EXHIBIT A** attached to this Agreement as City Notice recipient is City's representative for all purposes of this Agreement ("**City Representative**"). The City Representative shall communicate with Manager on all matters related to this Agreement. When this Agreement refers to communications to or with City, those communications shall be with the City Representative, unless this Agreement or the City Representative specifies otherwise. When this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the City Representative, except where City Council approval is expressly required or required by Law or City Council policy. City, in its sole and absolute discretion, may change the identity of the City Representative at any time by Notice to Manager.

12.2. Manager Representative. The Person identified in **EXHIBIT A** attached to this Agreement as Manager Notice recipient is Manager's representative for all purposes of this Agreement ("**Manager Representative**"). The Manager Representative shall be a Person holding an executive position with Manager of Executive Director or higher. The Manager Representative shall communicate with City on all matters related to this Agreement. Manager may change the identity of the Manager Representative by Notice to City at least ten (10) days in advance of the effective date of such change. When this Agreement refers to any act or approval to be performed by Manager, that act or approval shall be performed by the Manager Representative.

13. **EVENT OF DEFAULT REMEDIES.** Notwithstanding any provision of this Agreement to the contrary, if an Event of Default by Manager occurs, City may exercise any or all of the following remedies: (a) immediately terminating this Agreement; (b) deeming Manager ineligible from consideration for any future funding from City; (c) any other remedy specified in this Agreement; or (d) any remedy available at law or in equity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of any other rights or remedies under this Agreement, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to City against Manager. In addition to any and all other rights or remedies under this Agreement, at law, or in equity that may be available to City on the occurrence of a Default or an Event of Default by Manager, if Manager is in Default of this Agreement, City may take one or more of the following actions by Notice to Manager: (i) suspending one or more Assessment distributions to Manager, pending correction of the Default; or (ii) disallowing expenditure of Assessments for all or part of the Activities.

14. TERMINATION.

14.1. Convenience. Notwithstanding the Term of this Agreement, City or Manager may terminate this Agreement for any reason at any time during the Term upon sixty (60) days' Notice to the other Party.

14.2. Event of Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Manager, following the occurrence of an Event of Default by Manager.

14.3. Other Termination Events. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Manager if:

14.3.1. *Misrepresentation*. Manager made or makes a material misrepresentation to City relating to this Agreement or any money received pursuant to this Agreement, regardless of whether Manager had knowledge or intent with respect to the misrepresentation;

14.3.2. *Termination Authorized*. Manager violates any term or condition of this Agreement for which immediate termination is authorized;

14.3.3. *Performance Impairment*. Any of the Manager Parties becomes subject to any court action or proceeding that may materially and adversely affects Manager's performance of, or ability to perform, its obligations under this Agreement;

14.3.4. *Misappropriation of Funds*. Manager misappropriates any funds provided by City to Manager under this Agreement (or any other agreement with City);

14.3.5. *District Disestablishment*. City elects, in City's sole and absolute discretion, to disestablish the District; or

14.3.6. *Change in Law*. Manager is unable or unwilling to comply with any additional term or condition governing this Agreement, Activities, Assessments, or SBEP grant funds that may be required by newly enacted (or amended) Law.

14.4. Effect of Termination. Termination of this Agreement shall terminate the rights and obligations of the Parties under this Agreement, and any Person claiming any rights by or through a Party, except the Parties' rights or obligations expressly surviving termination of this Agreement; provided, however, any termination of this Agreement pursuant to either Section 14.2 or Section 14.3 shall not terminate City's rights under this Agreement to pursue any right or remedy relating to Manager's Event(s) of Default existing at the time of termination of this Agreement upon or as a result of such termination.

15. **MANAGER RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS AGREEMENT.** If this Agreement expires or is terminated, Manager shall complete any and all additional work necessary for the orderly filing of documents and closing of Manager's performance of its obligations under this Agreement, including delivering to City on or before the expiration or termination date of this Agreement: (a) Records, work product, leases, and agreements prepared or completed in connection with, or related to, Manager's performance under this Agreement; (b) all Assessments, accounts receivable attributable to the use of Assessments, vehicles, equipment, SBEP grant funds, and any other assets of the District; and (c) the final Annual Report covering the last Fiscal Year during the Term or applicable portion of such Fiscal Year.

16. **INFORMAL DISPUTE RESOLUTION**. If the Parties have any dispute about their respective rights, obligations, or duties under this Agreement, or the meaning or interpretation of any provision of this Agreement, they shall first attempt to resolve such dispute by informal discussion among their respective representatives. Within five (5) calendar days after determining the existence of any such dispute, the Party determining there is such a dispute shall give Notice to the other Party 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) calendar days after the delivery of such Notice, or at such other time as is reasonable under the circumstances.

17. **MANDATORY ASSISTANCE**. If a Third Person dispute or litigation, or both, to which City is or becomes a party, arises out of, or relates in any way to, this Agreement and Manager is not required to Indemnify City pursuant to Section 18 for all aspects of such dispute or litigation, upon City's Notice to Manager requesting such assistance, Manager Parties shall fully assist City in resolving the dispute or litigation. Manager Parties' assistance to City, referred to in this Agreement as "**Mandatory Assistance**," includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if the Manager Parties incur reasonable costs, City will reimburse Manager for such costs. However, if it is determined through resolution of the Third Person dispute or litigation, or both, that such Third Person dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of one or more of the Manager Parties, Manager shall fully reimburse City for all amounts paid to Manager or any Manager Parties in reimbursement of costs incurred in providing Mandatory Assistance and shall Indemnify City pursuant to Section 18 for the Third Person dispute or litigation. Any Legal Costs the Manager Parties may incur as a result of providing Mandatory Assistance are not reimbursable by City under this Agreement.

18. **INDEMNITY AGREEMENT**. Manager shall Indemnify the City Parties against any and all Claims arising from, connected with, caused, or claimed to be caused, by this Agreement, City disbursement of Assessments or SBEP grant funds to Manager under this Agreement, Manager expenditure of such funds, Manager accounting for receipt or expenditure of such funds, or by one or more acts or omissions of the Manager Parties in performing this Agreement, and all expenses of investigating and defending against any and all such Claims, including Legal Costs. However, Manager's duty to Indemnify the City Parties shall not include any Claim arising from the established sole negligence or willful misconduct of the City Parties. City may, in its sole and absolute discretion, conduct its own defense, or participate in its own defense, of any Claim subject to this Section 18. If City elects to conduct its own defense, participate in its own defense, or obtain

independent legal counsel in defense of any Claim subject to this Section 18, Manager shall pay City for all Legal Costs related to such defense. Manager shall pay City any and all costs, including Legal Costs, City incurs enforcing the provisions of this Section 18. The provisions of this Section 18 are not limited by the insurance requirements of Section 8.

19. **NOTICE.** In all cases where Notice is required under this Agreement, service of such Notice shall be effective on the date transmitted by e-mail, on the third Business Day after the Notice is deposited with the United States Postal Service for first-class mail delivery, or on the first Business Day after deposit with a nationally recognized overnight delivery service for next Business Day delivery, in each of the latter two cases, with postage or delivery costs paid and addressed to City or Manager as specified in **EXHIBIT A** attached to this Agreement. City or Manager may change its Notice address by Notice delivered in accordance with this Section 19. Notice delivered by personal service shall be effective on delivery. Any attorney representing a Party may give Notice on behalf of that Party.

20. **NO TRANSFER.** Because this Agreement is entered into by City in reliance upon Manager's qualifications, experience, and personnel, Manager shall not Transfer or subcontract any of its rights, obligations, or duties under this Agreement, without the prior written consent of City, which may be given, withheld or conditioned in City's sole and absolute discretion. Any asserted Transfer or subcontract of Manager's rights, obligations, or duties under this Agreement without City's prior written consent shall not create a contractual relationship between City and any asserted transferee or Subcontractor, and any such Transfer or subcontract shall be ineffective, null and void.

21. **CONFIDENTIALITY OF INFORMATION.** All information provided by City to Manager in connection with this Agreement, the District, Assessments, Activities, or SBEP grants is for the sole use of Manager in performing Manager' obligations under this Agreement. Manager shall not release any of this information to any Third Person, without the prior written consent of City, except information that: (a) was publicly known, or otherwise known to Manager, at the time the information was provided to Manager by City; (b) subsequently becomes publicly known, through no act or omission of Manager; (c) becomes known to Manager from a source or means other than City; or (d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48), as determined by the City Attorney.

22. **INTELLECTUAL PROPERTY.** All rights to Intellectual Property developed or acquired in the course of performance of this Agreement shall be the property of City and may be disposed of in accordance with City policy. City, in its sole and absolute discretion, may file for patents in connection with all rights to any such discoveries or inventions. Manager acknowledges that all Intellectual Property shall constitute a "work for hire," as that term is defined in the Federal Copyright Act of 1976, as amended. Accordingly, all right, title, and interest in and to all Intellectual Property shall be the exclusive property of City, including all copyrights and other intellectual property rights in any and all Intellectual Property. If for any reason any Intellectual Property is not deemed to be a "work for hire," Manager grants, transfers, sells, and assigns, exclusively to City, all right, title, and interest in and to said Intellectual Property, including all copyrights and other intellectual property rights. Manager shall sign and deliver to City a confirming grant and assignment of all rights in and to all Intellectual Property, and shall sign any other document City deems necessary to ensure the complete and effective transfer of all right,

title, and interest in and to such Intellectual Property to City. Manager shall deliver all Intellectual Property to City within thirty (30) calendar days following the expiration or termination of this Agreement. If Manager fails to deliver all Intellectual Property to City and City desires to use such Intellectual Property, Manager shall provide City with equivalent materials, at Manager's sole expense, or reimburse City, in full, for the cost of developing equivalent materials. Manager represents and warrants that any materials or deliverables, including all Intellectual Property, provided under this Agreement are original, not encumbered, and do not infringe upon the copyright, trademark, patent, or other intellectual property rights of any Third Person, or are in the public domain. If deliverables, materials, or Intellectual Property provided under this Agreement become the subject of a Claim of copyright, trademark, or patent infringement, City shall have the right, in its sole and absolute discretion, to require Manager to produce, at Manager's sole expense, new non-infringing materials, deliverables, or Intellectual Property as a means of remedying any Claim of infringement, in addition to any other remedy available to City at law or in equity. Manager shall Indemnify the City Parties against any and all Claims alleging that any materials, deliverables, supplies, equipment, services, or Intellectual Property provided under this Agreement infringe the copyright, trademark, patent, or other intellectual property or proprietary rights of any Third Person.

23. GENERAL PROVISIONS.

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

23.2. Governing Law. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the Laws of the State.

23.3. Jurisdiction and Venue. The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State court within the County, for any dispute, Claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Section 16.

23.4. Integration and Amendment. This Agreement and the exhibits attached to this Agreement fully express all understandings of the Parties concerning the subject matter of this Agreement. All prior negotiations and agreements between the Parties regarding the subject matter of this Agreement are merged into this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be enforceable, unless made in the form of a written amendment to this Agreement signed by the authorized representative(s) of each Party, respectively. The Parties agree to enter into any and all amendments to this Agreement that are necessary to comply with any and all new or modified Federal or State laws affecting this Agreement.

23.5. No Waiver. No failure of any Party to insist upon the strict performance by another Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy upon a Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or the requirement to comply with such term, covenant, or condition. No waiver of any Default or Event of Default shall affect or alter this Agreement, and each and every term,

covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent breach.

23.6. Successors in Interest. Subject to Section 20, this Agreement, and all rights, obligations, or duties under this Agreement, shall be in full force and effect, whether or not any Party to this Agreement has been succeeded by another entity, and all rights, obligations, or duties under this Agreement shall be binding on any Party's successor in interest.

23.7. Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Agreement shall be valid and enforced to the fullest extent Law allows.

23.8. Conflicts between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibit attached to this Agreement, the main body of this Agreement shall control. If a conflict exists between an applicable Federal, State, City, or other Law and this Agreement, then the Law shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, or Laws are not considered conflicts, and the most stringent requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

23.9. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Agreement may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Agreement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

23.10. Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

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

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

23.13. Exhibits Incorporated. All exhibits referenced in this Agreement are incorporated into this Agreement.

23.14. Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, and all continuing obligations set forth in this Agreement, shall survive expiration or termination of this Agreement.

23.15. Time of Essence. Time is of the essence of each provision of this Agreement.

23.16. Exhibits. All of the exhibits attached to this Agreement are as follows:

EXHIBIT A	Notice Addresses
EXHIBIT B	Insurance Requirements
EXHIBIT C	City Contract Provisions
EXHIBIT D	Prevailing Wage Requirements
EXHIBIT E	Assessment Disbursement and Reconciliation Procedures

[Signatures on following page.]

SIGNATURE PAGE
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

IN WITNESS WHEREOF, this Agreement is entered into by City, acting by and through its Economic Development Department Deputy Director, pursuant to City Council Resolution R-311760 authorizing entry into this Agreement, and Manager, by and through the signature(s) of Manager's authorized representative(s), all as set forth below.

CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Lydia Moreno
Deputy Director
Economic Development Department

THE PACIFIC BEACH COMMUNITY DEVELOPMENT CORPORATION

By: _____

Approved as to form:

MARA W. ELLIOTT
City Attorney

By: _____
for Delmar G. Williams
Deputy City Attorney

By: _____

EXHIBIT A
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

NOTICE ADDRESSES

City:

City of San Diego
Economic Development Department
Attn: Business Improvement District Manager
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Email: estudebaker@sandiego.gov

Manager:

The Pacific Beach Community Development Corporation
Attn: Pacific Beach Business Improvement District Manager
1503 Garnet Avenue
San Diego, CA 92109
Email: sara@pacificbeach.org

EXHIBIT B
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

INSURANCE REQUIREMENTS

1. **General Requirements**. Manager shall not begin any performance under this Agreement until Manager has: (1) provided City insurance certificates and endorsements evidencing all insurance policies and endorsements described in this **EXHIBIT B**; (2) obtained City approval of each insurance company or companies issuing such insurance policies or endorsements; and (3) confirmed that all insurance policies contain the special provisions described in this **EXHIBIT B**. Manager's liabilities, including its indemnity obligations under this Agreement, shall not be limited in any way to the insurance coverage described in this **EXHIBIT B**. Maintenance of the insurance coverage described in this **EXHIBIT B** is a material term of this Agreement and Manager's failure to maintain or renew any such insurance coverage or to provide evidence of renewal or replacement of any such insurance coverage during the Term is an Event of Default by Manager.

2. **Specific Insurance**. Manager shall procure and maintain for the duration of the Term insurance against Claims for injuries to Persons or damages to property that may arise from or in connection with Manager's performance under this Agreement and performance by any Manager Parties. Manager shall provide, at a minimum, the following insurance coverage:

2.1. Commercial General Liability. Insurance Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with liability limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the amount of the required occurrence limit.

2.2. Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Manager has no owned autos, Code 8 (hired) and Code 9 (non-owned), with a liability limit no less than $1,000,000 per accident for bodily injury and property damage.

2.3. Workers' Compensation. Workers' Compensation Insurance as required by the State, with statutory liability limits, and Employer's Liability Insurance with a liability limit of no less than $1,000,000 per accident for bodily injury or disease.

2.4. Other Insurance Provisions. The insurance policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

2.4.1. *Additional Insured Status*. City, its officers, officials, employees, and agents are to be covered as additional insured on the required Commercial General Liability insurance policy with respect to liability arising out of work or operations performed by or on behalf of Manager, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Manager's Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37, if a later edition is used).

2.4.2. *Primary Coverage*. For any Claims related to this Agreement, Manager's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by City, its officers, officials, employees, or agents shall be excess of Manager's insurance and shall not contribute with it.

2.4.3. *Notice of Cancellation*. Each insurance policy shall provide that coverage shall not be canceled, except after thirty (30) calendar days' Notice of cancellation to City.

2.4.4. *Waiver of Subrogation*. Manager grants to City a waiver of any right to subrogation that any insurer of Manager may acquire against City by virtue of the payment of any loss under any insurance policy. Manager agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this waiver applies regardless of whether or not Manager obtains such a waiver of subrogation endorsement from the insurer.

2.5. Deductibles/Self Insured Retentions. All deductibles under any insurance policy shall be the sole responsibility of Manager and shall be disclosed to City at the time the evidence of the insurance coverage is provided to City. Self-insured retentions under any insurance policy shall be the sole responsibility of Manager and must be declared to and approved by City at the time the evidence of the insurance coverage is provided to City. City may require Manager to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the deductible or retention. Each insurance policy with a self-insured retention shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

2.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise approved in writing 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 and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance issued by non-admitted carriers are subject to all of the requirements of this Agreement applicable to insurance policies issued by admitted carriers.

2.7. Verification of Coverage. Manager shall furnish City with original certificates and amendatory endorsements or copies of all applicable insurance policy language effecting insurance coverage described in this **EXHIBIT B**. All insurance certificates and endorsements are to be received and approved by City before any performance commences under this Agreement. Failure to obtain the required insurance documents prior to the beginning performance shall not waive Manager's obligation to provide the required insurance coverage or evidence of such insurance

coverage. City reserves the right to require complete, certified copies of all insurance policies, including endorsements, described in this **EXHIBIT B**, at any time.

2.8. Special Risks or Circumstances. City reserves the right to modify the insurance requirements of this Agreement, including liability limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2.9. Additional Insurance. Manager may obtain additional insurance not required by this Agreement, as long as the City, its officers, officials, employees, and agents are named additional insured under such insurance policies.

2.10. Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies, including all endorsements.

2.11. Subcontractors. Manager shall require and verify that all Subcontractors maintain insurance meeting all the insurance requirements of this **EXHIBIT B**. Manager shall also ensure that City is an additional insured on insurance required from Subcontractors. For commercial general liability insurance coverage, Subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.

EXHIBIT C
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

CITY CONTRACT PROVISIONS

1. **COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**. Manager shall comply with City's EOCP Requirements. Manager shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Manager shall provide equal opportunity in all employment practices. Manager shall ensure that its Subcontractors comply with this program. Nothing in this **EXHIBIT C**, Section 1, shall be interpreted to hold Manager liable for any discriminatory practice of its Subcontractors.

2. **NON-DISCRIMINATION IN CONTRACTING**. Manager shall comply with City's Nondiscrimination in Contracting Ordinance, codified in SDMC sections 22.3501 - 22.3517. Manager shall not discriminate on the basis of race, color, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Manager shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Manager agrees and understands that violation of this **EXHIBIT C**, Section 2, shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment or other sanctions. Within sixty (60) calendar days after Notice from City requesting such information, Manager shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Manager has used in the past five years on any of its contracts that were undertaken within the County, including the total dollar amount paid by Manager for each subcontract or supply contract. Manager shall fully cooperate in any investigation conducted by City, pursuant to City's Nondiscrimination in Contracting Ordinance, referenced above in this **EXHIBIT C**, Section 2.

3. **LOCAL BUSINESS AND EMPLOYMENT**. Manager acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Manager shall, to the extent reasonably possible and allowed by Law, solicit applications for employment and bids and proposals for Subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Manager shall hire qualified local residents and firms, whenever feasible and allowed by Law.

4. **LIVING WAGES**. This Agreement is subject to City's Living Wage Ordinance ("**LWO**"), codified at SDMC sections 22.4201 through 22.4245, if and to the extent that any of the Activities to be undertaken pursuant to this Agreement are services subject to the LWO. The LWO requires payment of minimum hourly wage rates and other benefits to "covered employees" (as defined in the LWO), unless an exemption from the LWO applies. SDMC section 22.4225 requires Manager and its Subcontractors to fill out and file a living wage certification with the City Manager within thirty (30) days after the Effective Date. Subcontractors hired by Manager after the Effective Date must fill out and file a living wage certification with the City Manager within

thirty (30) days after being hired. Manager shall require, by contract, all of its Subcontractors that are performing services subject to the LWO to comply with the LWO.

4.1. Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, Manager or any of its Subcontractors may be exempt from the LWO. For an LWO exemption determination, Manager or any of its Subcontractors must complete the Living Wage Ordinance Application for Exemption.

4.2. Proof of Compliance. Manager and all of its Subcontractors shall submit written proof of compliance with or exemption from the LWO on or before the first day of each Fiscal Year during the Term.

5. **AMERICANS WITH DISABILITIES ACT**. Manager shall comply with all accessibility requirements under the Federal Americans with Disabilities Act ("**ADA**") and under Title 24 of the California Code of Regulations ("**Title 24**"). When a conflict exists between the ADA and Title 24, Manger shall comply with the most restrictive requirement (i.e., the requirement that provides the most access). Manager shall also comply with City Council Policy 100-04, adopted by City Council Resolution R-282153, which policy is incorporated into this Agreement by this reference. Manager warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any Subcontract contains the Subcontractor's agreement to abide by the provisions of the ADA, Title 24, City Council Policy 100-04, and any other applicable access laws or regulations.

6. **DRUG – FREE WORKPLACE**. Manager shall comply with City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. Manager shall certify that it will provide a drug-free workplace, by electronically submitting to City a "Certification for a Drug-Free Workplace" form approved by the Manager Representative. Submittal of this certification by Manager shall be a condition precedent to this Agreement. Manager shall post in a prominent place at its offices a statement setting forth its drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that will be taken against employees for violating the policy. Manager shall establish a drug-free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug-free workplace; (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations.

7. **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, if Manager employs an individual, who, within twelve (12) months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to City Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by Notice to Manager.

8. **ENDORSEMENT**. Manager shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that

identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City, which approval may be given or withheld in City's sole and absolute discretion.

9. **EQUAL BENEFITS ORDINANCE**. In accordance with City's Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 ("**EBO**"), Manager shall provide and maintain equal benefits, as defined in SDMC section 22.4302 during the Term. Failure of Manager to maintain equal benefits consistent with the EBO is an Event of Default by Manager (SDMC 22.4304(e)). Manager shall notify its employees of the equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by its employees:

> "During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners."

9.1. Manager shall immediately give City access to documents and records sufficient for City to verify that Manager is providing equal benefits and otherwise complying with the EBO requirements. The full text of the EBO and the "Rules Implementing the Equal Benefits Ordinance" are posted on City's website at www.sandiego.gov/purchasing/ or can be requested from City's Equal Benefits Program Office at (619) 533-3948.

10. **CONFLICT OF INTEREST**. Manager shall comply with all Federal, State and City conflict of interest laws, regulations, and policies applicable to City contracts, including each of the following: (a) California Government Code sections 1090, et. seq.; and (b) California Government Code sections 81000, et. seq.

10.1. Public Officer or Employee Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Manager becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, it shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this Agreement, without liability to Manager, by giving Notice of termination to Manager.

10.2. City Ethics Code Restrictions. The Manager Parties shall be subject to the provisions of City's Ethics Ordinance (SDMC sections 27.3501-27.3595), including the prohibition against lobbying City for one (1) year following the expiration or termination of this Agreement. Manager shall establish, and make known to the Manager Parties, appropriate safeguards to prohibit them 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. The Manager Parties shall not recommend or specify any product, supplier, or contractor with whom they have a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If any Manager Party violates any conflict of interest law, or any of the provisions of this **EXHIBIT C**, Section 10.2, the violation shall be an Event of Default by Manager. Further, any such violation shall subject Manager to liability to City for Legal Costs and all damages sustained by City as a result of the violation.

10.3. Delivery of Board Roster. Within thirty (30) days after the Effective Date and on or before each anniversary of the Effective Date during the Term, Manager shall deliver to the City Representative a list of the names of all of Manager's board members and their business affiliations. If Manager's board membership changes during the Term, Manager shall deliver to City an updated list of the names of all of Manager's board members and their business affiliations within thirty (30) days after each such change occurs.

EXHIBIT D
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Manager and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and for any and all alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000. Pursuant to San Diego Municipal Code section 22.3019, construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 ("**Prevailing Wage Law**") and in performing or funding any and all such work, Manager and its Subcontractors shall comply with Prevailing Wage Law, including the requirements set forth in this **EXHIBIT D.** This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" pursuant to San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**") or this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, Manager and its Subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1. Notice to City. Manager shall Notify City whenever Manager or a Subcontractor intends to commence any activity that is subject to Prevailing Wage Law under this Agreement.

1.2. Compliance with Prevailing Wage Requirements. Pursuant to Prevailing Wage Law, Manager and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.2.1. *Wage Rates.* Copies of the prevailing rate of per diem wages are on file at City's Equal Opportunity Contracting Department and are available for inspection to any interested Person on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Manager or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested Person upon request. Manager shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.

1.2.2. *Wage Rate Effectiveness*. 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 wage rate shall be in effect for the Term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the Term of this Agreement, such wage rate shall apply to the balance of the Term of this Agreement.

1.3. Penalties for Violations. Manager and its Subcontractors shall comply with California Labor Code section 1775, if a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.

1.4. Payroll Records. Manager and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Manager and its Subcontractors shall comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR, and submitting certified payroll records to City through City's web-based Labor Compliance Program (described in this **EXHIBIT D**, Section 1.9). Further, Manager and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Manager is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner, and DIR.

1.5. Apprentices. Manager and its Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Manager shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.

1.6. Working Hours. Manager and its Subcontractors shall comply with California Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

1.7. Required Provisions for Subcontracts. Manager and each of its Subcontractors shall include, at a minimum, a copy of the following provisions in any contract it enters into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

1.8. Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Manager and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Manager and each of its Subcontractors certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Manager shall include this certification by each Subcontractor in each contract with a Subcontractor.

1.9. Labor Compliance Program. City has its own Labor Compliance Program authorized in August 2011 by DIR. City will withhold payments to Manager when payroll records are delinquent or deemed inadequate by City or another governmental entity, or it has been established, after an investigation by City or another governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact City's Equal Opportunity Contracting Department at 619-236-6000.

1.10. Contractor Registration Requirements. All work subject to Prevailing Wage Law is subject to compliance monitoring and enforcement by DIR. Manager must be registered with DIR before the Effective Date. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

1.10.1. *Inadvertent Error.* A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

1.10.2. *Cancellation.* A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the

awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.10.3. *Registration Certification*. By entering into this Agreement, Manager certifies that: (a) Manager is registered with DIR in compliance with Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City; and (2) Manager and its Subcontractors have verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

1.11. Stop Order. If Manager or its Subcontractor(s) engage in any work without the required registration, in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is/are registered. Failure to observe a stop order is a misdemeanor.

1.12. List of all Subcontractors. City may ask Manager for the most current list of Subcontractors (regardless of tier), along with their DIR registration numbers, utilized in performance of any work under this Agreement at any time during performance of this Agreement, and Manager shall provide the list within ten (10) working days of City's request. Additionally, Manager shall provide City with a complete list of all Subcontractors utilized in performance of any work under this Agreement (regardless of tier), within ten (10) working days after the completion of the work, along with their DIR registration numbers. City shall withhold any payments to Manager until 30 days after this information is received by City.

1.13. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of $25,000 or less. Manager shall still comply with California Labor Code sections 1720, et. seq. The only recognized exemptions are listed below:

1.13.1. *Registration*. Manager and its Subcontractors will not be required to register with the DIR for small projects. (California Labor Code section 1771.1).

1.13.2. *Certified Payroll Records*. The records required in California Labor Code section 1776 shall be required to be kept and submitted to City, but will not be required to be submitted online with the DIR directly. Manager will need to keep these records for at least three (3) years following the completion of the subject work. (California Labor Code section 1771.4).

1.13.3. *List of all Subcontractors*. Manager will not be required to hire only registered Subcontractors and is exempt from submitting the list of all Subcontractors that is required in this **EXHIBIT D**, Section 1.12. (California Labor Code section 1773.3).

1.14. Filing of Form PWC-100. Manager shall timely file or update a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed or updated form to City.

1.15. Filing of Notice of Completion. Manager shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

EXHIBIT E
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019

ASSESSMENT DISBURSEMENT AND RECONCILIATION PROCEDURES

During the first two Business Days of each month, EDD staff shall determine the Assessments posted into the District account during the immediately preceding month. EDD staff will then submit a payment request in SAP for that amount within ten (10) Business Days and include a copy of the "invoice" document specifying the relevant approved resolution and agreement authorizing the monthly disbursement. The amount to be disbursed in a particular month shall be provided to Manager within the first five (5) Business Days of that month. City Comptroller's staff will review the request and, if appropriate, release the payment within thirty (30) days after the first Business Day of each month.

Manager is required to register with City for the ACH payment program. Once the payment request is authorized by City Comptroller's Office, ACH payments are generally deposited into the receiving bank account the next Business Day (in the morning), but City does not guaranty deposits in any particular time period.

Manager shall submit a Reconciliation Packet to City for each month during the Term on or before the 25th day of the following month; provided, however, that at the end of each Fiscal Year, the Reconciliation Packet for the May Assessments distributed in June shall be due on or before the second Business Day after July 4.

For example, City will Notify Manager by the 5th Business Day of October of the amount of the September Assessments and the September Assessments will be disbursed by City to Manager on or before the thirtieth (30th) calendar day after the first Business Day of October. Then, the Reconciliation Packet for the use of the September Assessments shall be submitted to City by Manager on or before November 25.

Only Activity expenses in the Budget may be submitted with a Reconciliation Report to document use of Assessments. Failure to submit a Reconciliation Report on or before its due date will result in all future Assessment disbursements being stopped, until all overdue Reconciliation Reports are received by City and determined to be in compliance with the requirements of this Agreement.

The District accounting system (default software is QuickBooks, referred to as "**QB**") must be set up into classes or equivalent categories to generate appropriate reports. Classes or categories should include the following (as applicable):

- District
- PBID
- MAD
- Community Parking District
- SBEP Management Grant
- SBEP City Fees and Offset Request (Month that invoice is received and paid)
- SBEP Technical Assistance Grant
- SBEP Bookkeeping Grant
- EDTS
- CDBG
- Creative Communities San Diego (Arts and Culture funding)
- Council District Awards - Community Projects, Activities & Services (CPPS)
- County Grant Funding
- Other (fundraising)

The information required to be included as part of each monthly Reconciliation Packet is listed below:

1. A cover letter signed by the Manager Representative (who may not be the Executive Director) and all of the following information for each funding source/class/category (see accounting classes and categories listed above in this **EXHIBIT E**):
    a. The amount of eligible District expenses;
    b. The amount of District expenses to be applied against the corresponding month's Assessment disbursement and any Assessment disbursement amount on hand from prior months;
    c. Expenses to be applied against the Management Grant advance; and
    d. Any Assessment disbursement accrued for a future purpose.
2. Summary Profit and Loss Report* for each funding source/class/category for the month.
3. Transaction Detail by Account Report* each funding source/class/category.
4. Custom Journal Report* for all transactions in the month indicating the split of each expenditure between the various funding sources/classes/categories.
5. Bank Reconciliation Report.
6. Bank Statement(s) – include all pages.
7. Monthly Activity Report based on the Budget of proposed Activities for the Fiscal Year.
8. One copy of each check and invoice or receipt detailing the services/products for each expense must be submitted. All invoices shall itemize the eligible expenditures and include the names and rates of pay for contracted personnel who performed services on behalf of the District, the hours worked, and details of any reasonable and necessary out-of-pocket expenses. Statements alone are not acceptable, but may be submitted in addition to the invoice or receipt. Only those invoices and checks that pertain to City funding sources are to be submitted. These documents shall be provided in the same order as the list on the Transaction Detail by Account Report.

9. When past due expenses are being submitted, then the prior invoice(s) reflecting the amount owed must also be included, since only fully documented expenses may be accepted. However, payment of expenses from prior Fiscal Year(s) will not be eligible.
10. Checks and invoices are not to be stapled together.
11. Include payroll statements that detail all withholdings and taxes, if salaries are included in the Budget.
12. Proof of payments to State and Federal agencies are required, if the taxes/fringe benefits are to be considered eligible expenses.
13. For refreshments for public board/committee/taskforce meetings, submit an agenda and the sign-in sheet for each meeting.
14. For mileage, include a log that has the starting and ending mileage (or a map with driving directions and distance), the destination for each trip, and the purpose of the trip.
15. **Please note that ineligible expenses include, but are not limited to: late fees, finance charges (for late payments), citations, other penalties, nonsufficient fund bank fees, gifts, donations, gift cards, and alcohol purchases.**
16. One copy of each Board of Directors meeting agenda, minutes, and attendance sheet(s).
17. **Reconciliation Packets must be compiled in the following order:**

Document	Source
Cover Letter signed by Manager Representative	Template
Cover Sheet for each EDD funding Source/Class/Category	Template
P&L Summary by EDD funding Source/Class/Category (for all sources/classes/categories)	QB
Transaction Detail Reports for each EDD funding Source/Class/Category (with City G/L Codes for MADs)	QB
Journal Report (Custom) for each EDD funding Source/Class/Category	QB
Bank Reconciliation(s) report	District office
Bank Statement(s)	QB
ONE copy of back up for each of the expenses in the same order as the Transaction Detail Report	Check/Invoice
Activity Report for each EDD funding Source/Class/Category	Template
Board of Directors Meeting Agendas	District office
Board of Directors Meeting Minutes	District office
Board of Directors Meeting Attendance Sheet(s)	District office

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