

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
OCEAN BEACH MERCHANTS ASSOCIATION, INC. FOR
THE MANAGEMENT OF THE
OCEAN BEACH BUSINESS IMPROVEMENT DISTRICT
IN FISCAL YEAR 2011**

This Agreement [Agreement] is made between The City of San Diego, a municipal corporation [the City], and **Ocean Beach Merchants Association, Inc.**[Contractor], a California Corporation, hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, Ordinance No. **O-17248** established and defined a parking and business improvement area, known as the **Ocean Beach Business Improvement District**[District]; and

WHEREAS, pursuant to Ordinance No. **O-17248**, the City collects a special charge from business owners in the District to be used for the promotion of, and improvement to, the District; and

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

WHEREAS, the City desires to consider plans and proposals for the purpose of making general improvements in the District and solving problems of the District, including the:

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

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

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

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

ARTICLE I

EFFECTIVE DATE; TERM OF AGREEMENT

- 1.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2010 and continue for one year until June 30, 2011 [Term], unless terminated earlier in accordance with the terms of this Agreement.

ARTICLE II

CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

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

ARTICLE III

INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 3.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against City, whether

by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

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

ARTICLE IV

OBLIGATIONS OF CONTRACTOR

4.1 General Obligations.

- 4.1.1 Contractor shall perform all services necessary for the proper management of the District. Specifically, Contractor shall perform all Program-related services, including, but not limited to, the administration of the Program within the District, in a professional and prudent manner, and in accordance with the all applicable provisions of this Agreement, the Budget Report, City Council Policy 900-07 ("Business Improvement Districts"), the Parking and Business Improvement Area Ordinance (San Diego Municipal Code sections 61.1800 et seq.), the Parking and Business Improvement Area Law of 1965 (California Streets and Highways Code sections 36000 et seq.), and the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code sections 36500 et seq.). The "Budget Report" is the annual report submitted by contractor and approved by City Council in Resolution R- . "Program" is the improvements and activities within the District as described in the Budget Report and also refers to Contractor's obligations herein.
- 4.1.2 The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed the amount set forth in the District's budget, as described in the Budget Report. Any expenditure for items not included in the Budget Report shall not be reimbursed by the City.

- 4.1.3 Contractor shall be responsible for subcontracting for any support services required under this Agreement, and for paying for all such direct out-of-pocket expenses as may be necessary for the timely completion of the Program.
- 4.1.4 Contractor shall conduct all hiring of staff using an open, competitive process. This process shall include the publication of a Request for Qualifications in at least one newspaper of general circulation.

4.2 **Specific Obligations.**

4.2.1 Contractor shall:

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

4.2.2 Contractor shall hold an annual meeting in compliance with the noticing requirements herein. In addition, Contractor shall send a notice of the meeting to all business owners within the District, informing them of Contractor's functions, and affording them an opportunity to express their desires and concerns to Contractor.

4.2.3 Contractor shall appoint a representative and an alternate representative, at least one of whom shall attend each monthly meeting of the San Diego Business Improvement District Council.

4.2.4 Contractor shall provide, among other things, each of the following submittals to City:

- a) **Monthly Report.** This report shall include an outline of the activities and progress of Contractor's projects within the District, as well as Contractor's reimbursement requests, to be submitted by the thirtieth day of each month, beginning sixty days after the execution of this Agreement.
- b) **Annual Appropriation Report:**
 - 1. This report shall include an outline of the proposed improvements and activities within the District, as well as the estimated cost, by category, of providing those improvements and activities for Fiscal Year [FY] 2012.
 - 2. The report shall also identify the estimated amount of any surplus or deficit in District assessment funds to be carried over from FY 2011, and any anticipated contributions during FY 2012, to be collected from sources other than the District assessment funds levied in FY 2012.
 - 3. The report shall be delivered to the City on or before March 1, 2011, in time for the annual Business Improvement District [BID] appropriation process for Fiscal Year 2012 by the City Council.
- c) **Annual Report.** Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for FY 2011. The report shall be delivered to the City on or before November 30, 2011, and distributed to every business assessed in the District.

ARTICLE V

ADVANCES; REIMBURSEMENTS; ADJUSTMENTS; OTHER REVENUE

5.1 Advances.

- 5.1.1 Upon a written request from Contractor, the City may make a cash advance to Contractor for working capital purposes. Any advance will be based on available cash at the time of the request, subject to certification of funds availability by the City Auditor and Comptroller.
- 5.1.2 Any advance to Contractor shall be returned on or before the expiration of this Agreement (or upon termination, if earlier), either as a reduction of the final request for reimbursement, or as a transfer of funds from Contractor to City, unless otherwise specified in Exhibit A, "Advance Payment Information."

- 5.1.3 The City may advance Small Business Enhancement Program [SBEP] funds to Contractor, in full or in part, from those SBEP funds allocated to the Business Improvement District Council [BID Council], in accordance with City Council Policy 900-15. Such advance of SBEP funds is subject to each of the following:
- a) review and approval of the advance by the BID Council for BID management activities;
 - b) receipt by the City of a signed agreement between Contractor and the BID Council, detailing the amount, timing, permitted use of such funds, and any other language required by this Agreement;
 - c) authorization by Contractor for the City to audit the use of any advanced funds; and
 - d) receipt by the City of a full accounting by Contractor of any BID management SBEP funds previously advanced to Contractor.

5.2 **Reimbursement Requests.**

- 5.2.1 Contractor shall submit to City, on a monthly basis, its requests for reimbursement (in duplicate), along with all supporting receipts, invoices, checks, payroll statements, bank statements, and any other records for services performed, in accordance with the procedures described in Exhibit B, "BID Reimbursement Request Procedures." Each expenditure for reimbursement must show as cleared on the submitted bank statements. Bank statements, alone, will not be accepted by the City, except under extraordinary circumstances.
- 5.2.2 All requests for reimbursement shall be accompanied by the following statement: "(Contractor's Name) hereby certifies that all staff time expended and reimbursements requested are for services performed in accordance with the Agreement between The City of San Diego and (Contractor's Name) for the management of the (BID Name) in Fiscal Year 2011". Reimbursement requests shall be signed by an officer of Contractor, not the Executive Director.
- 5.2.3 Contractor shall not request reimbursement for any expenditure that has been or may be properly charged to a funding source other than District assessment funds.
- 5.2.4 Contractor shall not request reimbursement for any expenditure that has been or may be properly charged to a funding agency other than the City.

5.3 Reimbursements.

- 5.3.1 The City shall reimburse Contractor for Program expenses upon receipt of proper evidence of Contractor's eligible expenditures for FY 2011, pursuant to this Article, and in accordance with the standardized accounting and reimbursement procedures adopted by the City and the BID Council. Total reimbursement in FY 2011 shall not exceed the total District assessment funds available, as set forth in the Budget Report for FY 2011.
 - 5.3.2 Certain travel-related expenses may be eligible for reimbursement. To be considered for reimbursement by City, the travel-related expenses must be identified in the Budget Report, approved in advance by Contractor's board, and be for the purpose of receiving training or otherwise conducting Contractor's business affairs with respect to the District. Procedures and limitations on reimbursement of travel-related expenses are provided in the "Operating Manual for Economic Development Programs – Fiscal Year 2011 Update" incorporated herein by reference.
 - 5.3.3 A Reimbursement Request that is not consistent with the Budget Report, or is not supported with proper documentation described herein and in Exhibit B, shall be considered an ineligible expenditure and will not be reimbursed by the City.
 - 5.3.4 The City will not reimburse Contractor for any expenditure that has been or may be properly charged to a funding source other than District assessment funds.
 - 5.3.5 The City will not reimburse Contractor for any expenditure that has been or may be properly charged to a funding agency other than the City.
 - 5.3.6 The City will pay all properly submitted requests for reimbursement to Contractor no later than thirty calendar days from receipt of Contractor's completed request packet, subject to availability of District assessment funds collected by the City, (i.e., Cash in Treasury) for the District.
 - 5.3.7 Contractor shall not use District assessment funds in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed, or should have known of such debarment, suspension, or ineligibility.
- 5.4 **City Fees.** Pursuant to Council Policy 900-15 (SBEP), Contractor may request a one-time reimbursement for a portion of City fees incurred within the contract period in the course of implementing the activities and improvements specified in the Budget Report. Contractor shall complete and submit a form, as specified by the City, along with proof of payment by Contractor of the eligible expense(s), and a copy of each applicable permit. The maximum amount which may be reimbursed shall be determined by the BID

Council and provided in writing to the City; however, this amount may not exceed 95% of the eligible City fees.

- 5.5 **Adjustments Between Cost Categories.** Any Contractor request for adjustments between cost categories that, either by itself or when added to other such adjustments in the same fiscal year, exceeds twenty-five percent of the District's budget, as described in the Budget Report, shall be submitted to the City in writing, and shall be approved by City, in writing, prior to Contractor's expenditure of additional funds in any affected cost category. The City shall be authorized to make reasonable adjustments between Contractor's estimated cost categories, as limited by the total annual appropriation for the Program.
- 5.6 **Other Revenue.** In the event Contractor, in its capacity as the manager of the District, collects District assessment funds directly from associate members and/or classes of businesses not required by the City to obtain a Business Tax Certificate, Contractor shall separately account for such assessment funds and shall only use such funds to pay for Contractor's performance of its obligations and/or duties under this Agreement. Contractor shall, within thirty calendar days of any written request by the City, provide the City an accounting of Contractor's collection and expenditure of any such assessment funds.

ARTICLE VI

SUSPENSION AND TERMINATION

- 6.1 **Suspension or Disallowance of Payments.**
- 6.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:
- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
 - b) disallowing funds for all or part of the cost of the activity or action not in compliance.
- 6.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

6.2 Termination for Any Reason.

- 6.2.1 Notwithstanding the Term of this Agreement, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party delivered in accordance with the notice provisions herein.
- 6.2.2 In the event this Agreement is terminated pursuant to Section 6.2.1, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, no later than the termination date of this Agreement.

6.3 Termination for Curable Default.

- 6.3.1 Except as provided in Section 6.4.1, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor delivered in accordance with the notice provisions herein, if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 6.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in this section.
- 6.3.3 In the event this Agreement is terminated pursuant to this Section, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance under this Agreement, as well as all District assessment funds, accounts receivable attributable to the use of such funds, vehicles, equipment, and any other assets of the District, upon the termination date of this Agreement.

6.4 Termination for Incurable Default.

- 6.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor delivered in accordance with the notice provisions herein if:
 - a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;

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

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

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

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

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

or established, that may be available to the City against Contractor.

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

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

ARTICLE VII

INDEMNIFICATION

7.1 **Indemnification and Hold Harmless Agreement.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, without limitation, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or indirectly connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required whether or not such work or services are authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. Contractor's obligations under this section shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.

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

ARTICLE XIII

INSURANCE

- 8.1 **Contractor's Duty to Maintain Insurance.** At all times during this Agreement, Contractor shall maintain and comply with the insurance requirements set forth in this Article. Contractor shall provide to the City insurance certificates reflecting evidence of all insurance coverage required under this article within thirty days of the Effective Date. Notwithstanding any provision of this Agreement to the contrary, Contractor's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, the City shall be permitted to suspend payments during such default period.
- 8.2 **Insurance Requirements.** Contractor shall deliver to the City a current certificate of insurance for:
- 8.2.1 Commercial General Liability [CGL] Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
- 8.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle, including owned, hired, and non-owned vehicles. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- 8.2.3 Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). The Workers' Compensation policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.
- 8.3 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in the CGL and the Automobile Liability Insurance.
- 8.4 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development Department.

- 8.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.
- 8.6 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Contractor and must be disclosed and acceptable to the City at the time evidence of insurance is provided.
- 8.7 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 8.8 **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Contractor thirty (30) days prior written notice. Contractor shall also obtain any additional insurance required by the City for changed circumstances or City's reasonable re-evaluation of risk levels related to Contractor's obligations under this Agreement.
- 8.9 **Contractor's Liability Not Limited to Insurance Coverage.** Notwithstanding any other provision in this Agreement, Contractor's liability shall not be deemed limited in any way to the insurance coverage required in this Article.

ARTICLE IX

DATA AND RECORDS

- 9.1 **General.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Program (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records pertaining to all matters covered in this Agreement) during the term of this Agreement.
- 9.2 **Accounting Records.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Program-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.

- 9.3 **Inspection and Photocopying.** At any time during normal business hours and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Program data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties in connection with the Program. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 9.4 **Storage Period.** Contractor shall store, and require its Subcontractors to store, all Program data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Project data and records.
- 9.5 **Original Documents.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by City, the originals of all such data and records to City. Contractor may retain copies of all data and records delivered to City.
- 9.6 **Ownership of Documents.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of City. City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Project, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE X

AUDITS; FINANCIAL DISCLOSURES; OTHER DISCLOSURES

10.1 **Audits.** Contractor shall ensure that annual single audits and financial statement audits are completed by a Certified Public Accountant. Individual projects funded by the City must be clearly identified in the audit reports, as well as the dollar amount allocated to the Program by City.

10.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that annual single audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that annual single audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the annual single audit within fifteen calendar days of Contractor's receipt of the audit.

10.1.2 If, during FY 2011, Contractor expends \$35,000 or more of District assessment funds and other City funds, combined, then Contractor shall have a financial statement audit of those District assessment funds and other City funds. City funds include, but are not limited to, SBEP funds received through the BID Council. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles [GAAP], and audited by an independent Certified Public Accountant [CPA], in accordance with Generally Accepted Auditing Standards [GAAS]. This audit report shall include the following statements:

- a) a Statement of expenditure of City funds, by program, identified in the same expenditure categories as set forth in the Budget Report, and compared with the corresponding budgeted amounts;
- b) a statement of revenues and expenditures, including a balance sheet of all funds received by Contractor.
- c) a statement of compliance, setting forth Contractor's compliance with the terms and conditions of this Agreement; and

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

10.1.3 If Contractor is subject to an audit from a source other than City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion

of the audit. The City, at its sole discretion, may conduct an annual review of such third party audit(s).

- 10.2 **Financial Disclosures.** If, during FY 2011, Contractor expends less than \$35,000 of District assessment funds and other City funds (as defined above), combined, then Contractor shall provide true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year and detailing all funds received from the City during that fiscal year, employing the same statements described in 10.1.2 above. Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted in writing by City, upon written request by Contractor.
- 10.3 **Accounting of CDBG Funds.** If Contractor has a separate agreement with the City for the use of Community Development Block Grant [CDBG] funds, then the audit provisions of that agreement shall control for the accounting of CDBG funds.

ARTICLE XI

CONFLICTS OF INTEREST

- 11.1 Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of the City related to public contracts and procurement practices to the extent applicable.
- 11.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 11.3 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 11.4 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 11.5 If Contractor violates any conflict of interest law, or any of the provisions of this Article, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C, "Conflict of Interest and Procurement

Policy for Non Profit Corporations Contracting with the City of San Diego” or otherwise available in equity or at law. Further, any such violation shall subject Contractor to liability to the City for attorney’s fees and all damages sustained as a result of the violation.

ARTICLE XII

SUBCONTRACTORS

12.1 Subcontractors List and Subcontracts.

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

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

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

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

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

12.2 Required Language for Subcontracts.

- 12.2.1 Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain language which requires Subcontractors to at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Subcontractor shall also comply with all notices issued by the City under the authority of all current or future laws, statutes, ordinances, or regulations.
- 12.2.2 Subcontractor shall obtain all insurance coverage required of Contractor in this Agreement. Subcontractor shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with this Agreement. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.
- 12.2.3 If the City is made a party to any judicial or administrative proceeding to resolve the dispute between Contractor and Subcontractor, Contractor shall defend and indemnify the City as described herein.
- 12.3 **Contract Activity Report.** Within ten calendar days of a written request by the City, Contractor shall provide the City:
- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
 - b) an invoice from each Subcontractor listed in the Contract Activity Report.
- 12.4 **Prohibition on Use of Certain Subcontractors.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XIII

PROMOTIONAL MATERIALS

- 13.1 **Required Language.** Contractor shall include the following language on all promotional brochures, newsletters, advertising, Internet web sites, fact sheets, news releases, and other promotional materials: "Partially funded by The City of San Diego's Small Business Enhancement Program."
- 13.2 **Product Endorsements.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.
- 13.3 **Submittals to The City.** Contractor shall submit a final copy of any and all promotional materials to the following:

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

ARTICLE XIV

CITY POLICY PROVISIONS

- 14.1 **Nondiscrimination.** Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 14.2 **Compliance with City's Equal Opportunity Contracting Program.** Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor and all of its subcontractors are individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Contractor shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Contractor will take to achieve City's commitment to equal employment opportunities. Contractor shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by City's Equal Opportunity Contracting Program staff. Contractor's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and the City may bar Contractor from participating in City contracts for a period of not less than one (1) year.
- 14.3 **Local Business and Employment.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Contractor shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Contractor shall hire qualified local residents and firms whenever feasible.

- 14.4 **City Employee Participation Policy.** Contractor shall be in default of this Agreement if Contractor employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement. This provision does not apply to members of the City Council.
- 14.5 **Drug-free Workplace.** Contractor shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 14.5.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and
- 14.5.2 Establish a drug-free awareness program to inform employees about all of the following:
-) The dangers of drug abuse in the workplace;
 -) Contractor's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee-assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 14.5.2 Contractor shall include in each of its contracts related to this Agreement language obligating each contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Contractor, and each of its contractors and subcontractors, shall be individually responsible for their own drug-free workplace program.
- 14.6 **Disabled Access Compliance.** Contractor shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 14.7 **Living Wage Ordinance.** Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Contractor believes that it

or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Contractor may apply to City's Living Wage Administrator for determination of exemption.

ARTICLE XV

GENERAL PROVISIONS

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

If to City:

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

With a copy by First Class Mail to: San Diego City Attorney
Attn: Economic Development Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to contractor: As described in Exhibit A.

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

- 15.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 15.8 **Unavoidable Delay.** If the performance of any act required of the City or Contractor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Contractor or the City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 15.9 **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The “prevailing party” shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 15.10 **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 15.11 **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

- 15.12 **Entire Understanding.** This Agreement contains the entire understanding of the parties. The City and Contractor, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.
- 15.13 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 15.14 **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval.
- 15.15 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 15.16 **Waiver.** City's failure to insist upon the strict performance of any of Contractor's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. City's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by the City to constitute a valid and binding waiver. City's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. City's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but the City may at any and all times require the cure of the default.
- 15.17 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.

- 15.18 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 15.19 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 15.20 **Consents, Approvals.** Neither the City nor Contractor may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.
- 15.21 **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

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

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

Date: _____ Ocean Beach Merchants Association, Inc., a California non-profit corporation

BY: _____

Name: _____

Title: _____

Date: _____ THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____ JAN I. GOLDSMITH, City Attorney

BY: _____

Name: Adam R. Wander

Title: Deputy City Attorney

EXHIBIT A

ADVANCE PAYMENT INFORMATION

I. ADVANCE PAYMENTS

The outstanding advance held by the Corporation, as recorded in the City's General Ledger as of March 31, 2010, is \$0. This may include both SBEP and BID funds.

BID Assessment Advances: Current BID advances are to be repaid or accounted for through submission of expenses incurred within FY2010. Any additional advances to the Corporation from BID Assessments made on or before June 30, 2010 are subject to repayment or write-off via submission of appropriate documentation by December 31, 2010.

Small Business Enhancement Program Advances: Current SBEP advances are to be repaid or accounted for through submission of expenses incurred before June 30, 2011 unless a written extension through August 31, 2011 is provided by City. Any subsequent advances to the Corporation from Small Business Enhancement Program funds made on or before June 30, 2010 are subject to repayment or write-off via submission of appropriate documentation through June 30, 2011 unless a written extension through August 31, 2011 is provided by City.

II. CORPORATION ADDRESS FOR NOTICES

Ocean Beach Merchants Association, Inc.
1868 Bacon Street, Suite A
San Diego, California 92107

III. SAN DIEGO BUSINESS IMPROVEMENT DISTRICT COUNCIL

Representative: Denise (Denny) Knox
Alternate: Mike Akey

IV. OTHER RESPONSIBILITIES

No special responsibilities are included in this Agreement.

EXHIBIT B

BID REIMBURSEMENT REQUEST PROCEDURES

Funds are distributed on a reimbursement basis. To access your BID assessment money, you must submit a reimbursement request to the Office of Small Business (OSB). The request should not exceed the cash-in-treasury amount, which is provided to each organization (Contractor) at the beginning of the month. If the reimbursement request amount exceeds the cash-in-treasury amount, the request will be delayed for processing, until sufficient funds are available. Only BID-related activity expenses are eligible for reimbursement.

First, your QB will need to be set up into Classes to generate the correct reports. Classes should include the following: (On request, the BID Council will provide assistance to help you set this up)

1. BID
2. SBEP Management Grant
3. MAD
4. Community Parking District
5. City Fees and Offset Request (Month that invoice is received and paid)
6. EDTS (submit monthly and will be reimbursed quarterly)
7. CDBG
8. Creative Communities San Diego (Arts and Culture funding)
9. Council District Awards (TOT)
10. County Grant Funding
11. Other (fundraising)

The package should be assembled as follows:

PACKAGE CHECK LIST		
Document	Source	Included
Cover Letter(s) for each funding source (BID/SBEP should be together) Use EDTS Form for EDTS.	Template	
P&L Summary by class	QB	
Cash Disbursement Report for all checks	QB	
Journal Report (Custom)	QB	
Bank Statement(s)	BID office	
Bank Reconciliation(s) report	QB	
Cash Deposit Report	QB	
Back Up for each for each of the expenses	Check/Invoice	
Monthly Activity Report	Template	
Transaction Detail Reports for each City Funding Source (with City G/L Codes for MADs)	QB	
Minutes	BID office	
Attendance Sheets	BID office	

Cover letters for each funding source being requested through OSB (BID and SBEP Mgmt Grant should be on one letter) indicating how much is requested for reimbursement and how

much is being applied against the outstanding grant advance.

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

Generate a **Cash Disbursement Report** for all transactions in the month. *The BID Council will come and help you set this up as a memorized transaction.*

Generate a **Journal Report** for all transactions in the month. *The BID Council will come and help you set this up as a memorized transaction.*

Generate a **Transaction Detail by Account** for each City Funding source. *The BID Council will come and help you set this up as a memorized transaction.*

Banks Statements – include all pages (and highlight checks being requested?)

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

Cash Deposit Report – QB – *The BID Council will come and help you set this up as a memorized transaction.*

Modify the **Monthly Activity Report** template to match the funding requested based on the activities done for the month.

Generate a **Transaction Detail Report** for each City Funding Source being claimed. Change the dates to match your request. *The BID Council will come and help you set this up as a memorized transaction.*

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

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

One copy of the **Minutes** and **Attendance sheets.**

Checks are cut by the City Comptroller's Office on Monday, Tuesday, Wednesday, and Thursday nights and are mailed out by them the next morning. It may take three (3) to four (4) working days for your check to be delivered. The City Comptroller's Office recently implemented a new policy in which checks will no longer be held for pick-up.

EXHIBIT C

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier, or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

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

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than \$5000 from a single contractor in a 12 month period:
< No competitive procurement process is required.

2. Expenditures of between \$5000 and \$25,000 from a single contractor in a 12-month period:
 - < Obtain three written price proposals or demonstrate why three bids could not be obtained.
 - < Present price proposal information to full board for approval of contract or transaction.
 - < Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than \$25,000 for goods and/or services from a single contractor in a 12 month period:
 - < Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
 - < Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
 - < Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
 - < Record action taken by the board in meeting minutes and keep the proposals received on file.
 - < After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

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