

**DOWNTOWN CPD NEIGHBORHOOD PARKING PROGRAM  
AGREEMENT FOR FISCAL YEAR 2021**

This Neighborhood Parking Program Agreement (“Agreement”) is made by and between the City of San Diego, a California municipal corporation (“City”), and the Gaslamp Quarter Association, a California nonprofit, (“Contractor”) (hereinafter collectively, the “Parties”).

ORIGINAL

RECITALS

- A. The City administers the Downtown Community Parking District (“DCPD”), which includes the Gaslamp Quarter neighborhood.
- B. The boundaries of the Gaslamp Quarter neighborhood are generally defined as follows: 4th, 5th and 6th Avenues from Harbor Drive to Broadway (“Gaslamp Quarter Neighborhood”).
- C. Contractor has provided to the City a conceptual parking plan to aid in the parking issues facing the Gaslamp Quarter Neighborhood and wishes to enter into an agreement with the City by utilizing parking meter revenue to implement the conceptual parking plan.
- D. The City desires to retain the services of the Contractor to provide parking administration services for the Gaslamp Quarter Neighborhood of the DCPD.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

AGREEMENT

- 1. Definitions. The following terms shall be defined as follows:
  - 1.1. **Fiscal Year**. The City’s fiscal year starting July 1, 2020 and ending June 30, 2021.
  - 1.2. **Notice**. Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing.
  - 1.3. **Notify**. To give a Notice.
  - 1.4. **Project**. The Scope of Services to be provided by Contractor, a copy of which is attached hereto as Exhibit A.
  - 1.5. **Project Funds**. All DCPD Funds (defined below) allocated to this Agreement.
  - 1.6. **Project Records**. All administrative or financial records required in connection with

the Project that are prepared or gathered by Contractor, including all books, papers, invoices, receipts, accounting records in accordance with Generally Accepted Accounting Principles (GAAP), payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data or records pertaining to any or all matters covered by this Agreement.

- 1.7. **Reimbursement Period.** This Agreement will allow reimbursement requests for the full Fiscal Year
- 1.8. **Request for Reimbursement.** The packet submitted utilizing City supplied forms and Contractor back-up documentation (consisting of proof of expenses incurred and payments made in conformance with the requirements of this Agreement and Council Policy 100-18 to the satisfaction of the Contract Administrator) that is the basis for requesting reimbursement of eligible Project expenses each Reimbursement Period.
- 1.9. **Subcontractor(s).** Each subcontractor hired by Contractor to the extent directly related to the Project.
- 1.10. **Term.** The meaning as defined in Section 2.
- 1.11. **DCPD Funds.** Funds appropriated by the City and approved by the Council of the City of San Diego as part of the Fiscal Year Annual Plans and Budget, in accordance with Council Policy 100-18.
2. Effective Date; Term of Agreement. Upon 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, 2020 (the “Effective Date”) through June 30, 2021 (the “Term”).
3. Scope of Services.
  - 3.1 Contractor’s Obligations. Contractor shall conduct the Project in accordance with Council Policy 100-18, Community Parking District, as amended from time to time.
  - 3.2 The Project description shall be in sufficient detail to provide a sound basis for City to effectively monitor Contractor’s performance under this Agreement, identify proper expenditures of parking meter revenue consistent with Council Policy 100-18, and all work shall occur only within the Term of this Agreement.
4. Contract Administrator; Designated Representative. City’s Economic Development Department (“Department”) shall be the contract administrator for this Agreement. City

shall designate, and from time to time may re-designate, a representative (the “Designated Representative”) for the purposes of this Agreement.

- 4.1 Direction. Contractor shall work solely under the direction of the Department and the Designated Representative in performing the Project.
- 4.2 Consent/Approval. Contractor shall inform Contract Administrator, in writing, within ten (10) days of the occurrence of any of the following changes: (i) the resignation, retirement, or discharge of its executive director, chief executive officer, or other managing agent; (ii) a majority change in the membership of the board of directors; (iii) a change in programming that significantly deviates from the Contractor’s mission or overall purpose; and/or (iv) a change in annual operating income such that any matching fund requirement will not be met by the end of the contract year.
5. Independent Contractor. Contractor acknowledges, and shall ensure that each Subcontractor acknowledges, that they are an independent contractor and not an agent or employee of City. No provision of this Agreement shall be interpreted to give City any right to direct, or exercise any control over Contractor concerning the details of performing the Project. Contractor shall follow the City’s direction only as to the end results sought from the Project.
6. Assignment; Subcontracting. This Agreement is made in reliance on Contractor’s qualifications, experience, and identified personnel. Therefore, Contractor may not assign or subcontract any of its rights or obligations under this Agreement without City’s prior written consent. Any purported assignment of any of Contractor’s rights or obligations under this Agreement without City’s prior written consent shall be void *ab initio* and a default of this Agreement.
7. Performance Reporting. Contractor shall submit to the City performance reports in accordance with the schedule and requirements below.
  - 7.1 Quarterly Reports. Contractor shall submit a report each quarter detailing Project work performed and progress towards Project goals in the quarter per the schedule listed herein. Failure to timely submit a report each quarter may result in cessation of reimbursements until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement. Reports for Quarters 1 through 3 are due to the City within fifteen (15) calendar days of the close of each Report Period.
  - 7.2 Final Performance Report. Contractor shall submit a Final Performance Report within seven (7) calendar days of City’s Fiscal Year end indicating the extent to which the outcomes of this Agreement have been accomplished. Failure to timely submit a Final Performance Report shall result in cessation of reimbursements until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement. An overdue

Final Performance Report must be submitted no later than thirty-one (31) days after the end of the Fiscal Year.

- 7.3 Report Acknowledgement. Each report shall be accompanied by documentation evidencing credit to the City for its financial support, including but not limited to, copies of publicity and advertising materials related to the Project consistent with Sections 21 of this Agreement.
- 7.4 Statement of Compliance. Contractor shall also attach to the Final Performance Report a Statement of Compliance signed by the executive director or other chief executive officer of the Contractor, certifying that the Contractor has complied with the terms of this Agreement. City shall not make the final payment unless Contractor submits the "Statement of Compliance".

8. Neighborhood Parking Program Expenditures.

- 8.1 Other Funding. Contractor shall not be reimbursed for any expenditure that has been (or will be) properly charged to a funding source other than the City.
- 8.2 Total Reimbursement. Contractor may be reimbursed only for those expenditures the Contract Administrator approves as reasonable and appropriate costs consistent with Council Policy 100-18, provided that those expenditures are incurred by Contractor during the Term of this Agreement and are already paid for by Contractor.
  - 8.2.1 The City shall not make any payment to Contractor if Contractor is in default of any previous City Agreement.
  - 8.2.2 Expenses requested for reimbursement that are not supported with proper documentation shall be considered ineligible expenditures.
  - 8.2.3 Expenses requested for reimbursement that are ineligible under Council Policy 100-18 or this Agreement, shall be considered ineligible expenditures unless approved, in writing, by the City.
  - 8.2.4 This Agreement is for reimbursement purposes only.
  - 8.2.5 Contractor shall advise City at the beginning of the Fiscal Year whether the Reimbursement Period will be monthly or quarterly.
  - 8.2.6 Request for Reimbursement shall be submitted via email to [EDDPayments@sandiego.gov](mailto:EDDPayments@sandiego.gov).
  - 8.2.7 None of the funding provided by the City under this Agreement shall be used to fund any activity that has been or could be funded through the Maintenance Assessment District contract between the Contractor and the

City, or other funding agreements of the Contractor. The purpose of this funding is solely to provide parking management services in the approved budget.

8.3 Reimbursement Schedule. Request for Reimbursement may be submitted during the Term, except that the final Request for Reimbursement must be submitted within fourteen (14) calendar days of the end of the City's Fiscal Year. An alternative Reimbursement Schedule may be utilized only after Contractor requests and receives written approval in advance from the Contract Administrator.

8.3.1 Request for Reimbursement shall not exceed one-twelfth (1/12) or one-quarter (1/4) of the Total Reimbursement amount of this Agreement as specified in Section 8.2 unless written approval is provided from the Contract Administrator for an alternative Reimbursement Schedule.

8.3.2 The City reserves the right to temporarily withhold or adjust the final payment, subject to the City's approval of the Final Performance Report, all financial disclosures, and any audits required of Contractor under this Agreement. The City's approval will not be withheld unreasonably.

8.3.3 All DCPD Funds allocated to Contractor pursuant to this Agreement and not requested to be paid to Contractor through submission of complete and error-free Requests for Reimbursement (with back-up documentation) by July 31 shall be forfeited.

8.4 Advances. At the written request of Contractor, the City may make an annual advance payment to Contractor to meet the cost of program expenses in an amount not to exceed fifteen percent (15%) of Project Funds ("Advance Funds") per advance ("Advance"). Repayment of such an Advance or accounting for the use of the Advance Funds must be made annually prior to each fiscal year end. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the Advance to the City within thirty (30) calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the Advance to the next agreement with Contractor. In the event this Agreement is terminated at an earlier time, Contractor must return to the City any unexpended funds from the Advance upon the termination date of this Agreement.

9. Project Records. Contractor shall maintain, and shall ensure that each Subcontractor maintains all administrative and financial records required by this Agreement (the "Project Records"), including without limitation, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and records related to the Project.

- 9.1 Accounting Standard. Contractor shall create, maintain and ensure that each Subcontractor creates and maintains, complete and accurate accounting records in accordance with Generally Accepted Accounting Principles (“GAAP”) in the applicable industry.
- 9.2 Production; Inspection; Audit. Within ten (10) business days after City’s written request for Project Records, Contractor shall make the Project Records available to City and its authorized agents for review and audit. Upon City’s request, Contractor shall deliver to City exact duplicates of all requested Project Records. Contractor shall permit, and shall ensure that each Subcontractor permits, the City and its authorized agents to inspect and photocopy Project Records at any reasonable time and location within San Diego County, such as Contractor’s offices. City may retain copies of Project Records. City shall maintain all copies of Project Records in the strictest confidence allowed by law. If Contractor or a Subcontractor is unable to make Project Records available for inspection within San Diego County, then Contractor shall pay all of City’s travel-related costs to inspect and/or audit the Project Records at the location where the Project Records are maintained.
- 9.3 Storage Period. Contractor shall store, and shall ensure that each Subcontractor stores, all Project Records for a period of not less than five (5) years after submission of the final expenditure report upon the expiration or the earlier termination of this Agreement, or until all audit findings have been resolved, whichever is longest. All Project Records shall be kept at a protective, secure location. At any time during the storage period, Contractor shall permit, and shall ensure that each Subcontractor permits, City and its authorized agents to examine all Project Records as provided in this Agreement. After the expiration of the storage period, Contractor shall notify City at least thirty (30) calendar days prior to its intent to dispose of Project Records. Contractor shall not dispose of Project Records without City’s prior written consent.
- 9.4 Original Project Records. At any time after the expiration or earlier termination of this Agreement, City may request original Project Records from Contractor or any Subcontractor. Within ten (10) business days after City’s request Contractor shall deliver the requested original Project Records to City. Contractor, or the applicable Subcontractor, may retain copies of any such Project Records.
- 9.5 Ownership of Project Records. All Project Records shall be the City’s property. City’s ownership of the Project Documents includes without limitation the use, reproduction, and/or reuse of the Project Documents, as well as all incidental rights.

10. Audits; Financial Disclosures; Other Reports and Disclosures.

- 10.1 Financial Statement Audits. If Contractor receives \$75,000 or more combined in federal, state, or City funds annually, Contractor shall have a financial statement audit. A financial statement audit is the examination of Contractor's financial

statements and accompanying disclosures by an independent auditor. The result of this examination is a report by the auditor, attesting to the fairness of presentation of the financial statements and related disclosures. This financial statement audit shall be prepared in accordance with GAAP and performed by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards (GAAS). Contractor shall deliver a report of each such financial statement audit and accompanying financial statements to City no later than September 30 after the City's fiscal year-end. City may extend the deadline by up thirty (30) calendar days upon Contractor's written request.

Each financial statement audit report shall include the following statements:

- 10.1.1 a statement of expenditures of City funds by program, identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
  - 10.1.2 a statement of revenues and expenditures, and a statement of financial position for all funds received by Contractor; and
  - 10.1.3 a statement certifying compliance with all terms and conditions of this Agreement, and that all required reports and disclosures have been completed and submitted, attested to by an executive officer, general partner, or owner of Contractor.
- 10.2 If Contractor is subject to an audit from a source other than City, Contractor shall deliver a copy of the audit report to City within ten (10) business days after Contractor receives the audit report. City, at its sole discretion, may conduct an annual review of each such third-party audit.
- 10.3 Financial Disclosures. If Contractor receives \$10,000 or more, but less than \$75,000 combined, in federal, state, or City funds annually, Contractor shall deliver to City within ninety (90) calendar days after the end of the year copies of true, accurate, and complete financial reports and disclosure documents evidencing, to City's reasonable satisfaction, Contractor's financial status. City may extend the deadline by up thirty (30) calendar days upon Contractor's written request.

Contractor shall submit at least the following:

- 10.3.1 a statement of expenditures of City funds by program, to be identified in the same expenditure classifications as contained in the City funded final budget and approved through the application process and compared with the budgeted amounts; and
  - 10.3.2 a statement of revenues and expenditures, and a statement of financial position of all funds received by Contractor.
- 10.4 Other Reports and Disclosures.

- 10.4.1 If Contractor receives less than \$10,000 combined in federal, state, or City funds annually, Contractor shall deliver a report to City within thirty (30) calendar days after the expiration or earlier termination of this Agreement describing how such funds were used during the Term.
- 10.4.2 If Contractor receives \$500,000 or more combined in federal, state, or City funds annually, or when that combined federal, state, or City funding represents more than ten percent (10%) of Contractor's annual budget, Contractor shall include in its annual documentation required under this Agreement a report itemizing the salary and wage ranges for each of Contractor's job classifications, including actual executives' salaries and benefits packages applicable during the Term.
11. Compliance with Laws and Policies. Contractor shall comply, and shall ensure that each Subcontractor complies, with all applicable laws, rules, regulations, ordinances, resolutions, permits, policies, and directives of the federal, state, and local governments in performing this Agreement.
- 11.1 Conflicts of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 8100, *et seq.*, and the Ethics Ordinance, codified in the San Diego Municipal Code ("SDMC"). City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests.
- 11.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.
- 11.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend any 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.
- 11.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a shame bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.



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

12. Non-Discrimination Requirements.

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

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

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

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

12.5 Local Business and Employment. Contractor acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for 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.

- 12.6 Living Wage Ordinance. Contractor shall comply, and shall ensure that each Subcontractor complies, with the provisions of City's Living Wage Ordinance, codified in SDMC sections 22.4201 et seq., in performing this Agreement.
- 12.7 Drug-Free Workplace. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Agreement by this reference.
- 12.8 Contractor Certification for Americans with Disabilities Act ("ADA") and State Access Laws and Regulations. Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations ("Title 24"). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.
- 12.9 Storm Water Pollution Prevention. Contractor shall comply with the City's Storm Water Management and Discharge Control Ordinance provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of the City regardless of location. Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended. Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.
- 12.10 Hiring of Full-Time Staff. Contractor shall conduct all hiring of full-time staff using an open, competitive process. This process shall include the publication of a Request for Qualifications in a newspaper of general circulation or comparable website.
- 12.11 Lobbying and Political Activities. Contractor shall not use, and shall ensure that each Subcontractor does not use, any of the funds, personnel, or materials received in connection with this Agreement, to influence, or attempt to influence,

any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, of any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

12.11.1 By signing this Agreement, Contractor certifies that Contractor is aware of, and promises to comply with, each of the lobbying and political activities provisions of this Agreement. Contractor shall also require this same certification to be included in all subcontracts, sub-grants, and cooperative contracts exceeding \$100,000.

12.11.2 Contractor acknowledges that the duty to disclose lobbying activities is a continuing requirement, and shall make such disclosures at the end of each calendar quarter in which there occurs any event requiring disclosure.

13. Insurance. Contractor shall deliver to City, and shall ensure that each Subcontractor delivers to City, a current certificate of insurance with attached policy endorsements for:

13.1 Commercial General Liability 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);

13.2 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) operated in performing any and all work pursuant to this Agreement. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

13.3 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).

13.4 Additional Insureds. Pursuant to a separate endorsement, "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 13.5 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or self-insurance maintained by City.
- 13.6 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 and which are acceptable to City. 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.
- 13.7 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 City at the time evidence of insurance is provided.
- 13.8 Continuity of Coverage. All policies shall be effective as of the Effective Date. The policies shall be kept in force for the duration 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. Contractor shall provide proof of continuing insurance at least annually during the term of this Agreement. If insurance lapses or is discontinued for any reason, Contractor shall immediately notify City and obtain replacement insurance as soon as possible.
- 13.9 Modification. To assure protection from and against the kind and extent of risk existing with the Project, 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 City for changed circumstances or City's reasonable re-evaluation of risk levels related to the Project.
- 13.10 Accident Reports. Contractor shall immediately report to City any accident causing property damage or injury to persons and related to the Project. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 13.11 Causes of Loss - Special Form Property Insurance. Contractor shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of Contractor's insurable property related to the Project in an amount to cover 100 percent (100%) of the replacement cost. Contractor shall deliver to City a certificate of such insurance.
- 13.12 Subcontractors' Insurance. Contractor shall ensure that each Subcontractor complies with the insurance provisions of this Agreement as if the Subcontractor

were Contractor. Contractor and each Subcontractor shall be individually responsible for obtaining and maintaining their own insurance.

14. Termination.

14.1 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Agreement by giving thirty (30) days' written Notice of such termination to Contractor. The termination of the Agreement shall be effective upon receipt of the Notice by Contractor. After termination of all or any portion of the Agreement, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Agreement. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimate, summaries, and such other information and materials created or received by Contractor in performing this Agreement, whether completed or in process. By accepting payment for completion, filing and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Agreement with regard to the affected performance.

14.2 City's Right to Terminate for Default. If Contractor defaults any portion of this Agreement, City reserves the right to suspend funding until Contractor complies with the terms of the Agreement, and if the Contractor fails to comply with the terms of the Agreement, to reduce payments to the Contractor or to terminate this Agreement. If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Agreement, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement.

14.3 Continuing Responsibilities. Upon any termination of this Agreement, this Agreement shall continue until Contractor has completed any and all additional work necessary for the orderly filing of documents and winding up Contractor's performance of this Agreement as City may reasonably direct. Upon the termination of this Agreement, Contractor shall deliver to City all funds for Special Promotional Programs for the provision of Economic Development Services on hand at the time of the termination, and any accounts receivable attributable to the use of these funds.

14.4 Rights and Remedies Reserved. City's rights and remedies under this Agreement are cumulative and shall not limit, waive, or deny any other rights or remedies at law or in equity, existing on the Effective Date or later enacted or established.

15. Informal Dispute Resolution. If the Parties have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any

provision contained herein, they shall first attempt to resolve such dispute by informal discussion between themselves. Such discussion shall take place as soon as reasonably possibly after delivery of a written notice of dispute.

16. Mandatory Assistance. If a third-party dispute or litigation, or both, arises out of, or relates in any way to this Agreement, then upon City's request, Contractor and its agents, officers, and employees shall assist City in resolving the dispute or litigation. Contractor's assistance to City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute resolution and/or litigation.
  - 16.1 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred in providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor or its agents, officers, or employees, then Contractor shall reimburse City for all fees paid to Contractor and its agents, officers, and employees for the Mandatory Assistance.
  - 16.2 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 16.2 are not reimbursable.
17. Indemnification. To the fullest extent permitted by law, Contractor shall protect, defend (with legal counsel reasonably acceptable to City), indemnify, and hold harmless City and its elected officials, officers, representatives, agents and employees ("Indemnified Parties") from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance of services under this Agreement by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.
18. Subcontractors. Within five (5) business days after the Effective Date, Contractor shall deliver to City: (a) a list of all Subcontractors and intended Subcontractors, with their contact information; and (b) a copy of each Subcontractor contract, including the scope of work, a written statement describing the justification for the Subcontractor's services, and an itemization of all costs for the Subcontractor's services. If Contractor hires additional Subcontractors, or modifies any existing Subcontractor contract, Contractor shall deliver

to City: (a) an updated list of all Subcontractors, with their contact information; and (b) a copy of each new or modified Subcontractor contract, including the scope of work, a written statement describing the justification for the Subcontractor's services, and an itemization of all costs for the Subcontractor's services. City may forward the Subcontractor lists to EOCP.

18.1 Procurement. Contractor shall comply with all federal, state, and local laws, regulations, and policies applicable to public contracts and procurement practices, including without limitation the City's Conflict of Interest and Procurement Policy for Nonprofit Corporations, a copy of which is attached hereto as Exhibit E. Contractor shall maintain documentation of the process used to procure Subcontractor services, and shall deliver to City upon request a copy of all such documentation.

18.2 Contract Activity Report. Upon request, Contractor shall deliver to City such statistical information and such Subcontractor invoices as City may reasonably require.

18.3 Prohibited Subcontractors. Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor who is subject to federal, state, or local debarment, suspension, or ineligibility.

19. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally, sent by United States mail, postage prepaid, or by reliable overnight courier. Any party entitled or required to receive notice under this Agreement may designate a different address to which notices shall be sent. Notice shall be effective upon confirmed receipt. The parties' addresses for notice shall be as follows:

THE CITY OF SAN DIEGO  
Attn: Ben Verdugo  
Economic Development Department  
1200 Third Avenue, Suite 1400  
San Diego, CA 92101  
(619) 533-4741  
bverdugo@sandiego.gov

With a copy by First Class Mail to:

GASLAMP QUARTER ASSOCIATION  
Attn: Michael Trimble, Executive Director  
614 5<sup>th</sup> Avenue, Suite E  
San Diego, CA 92101  
619-233-5227  
michael@gaslamp.org

20. Confidentiality. Contractor shall maintain all information it receives from City and related to this Agreement as strictly confidential shall not release any such information to any third party without City's prior written consent. This confidentiality obligation shall not apply to information that: (a) was publicly known, or otherwise known to Contractor, at the time the information was provided; (b) subsequently becomes publicly known, through no act or omission of Contractor; (c) becomes known to Contractor from a source or means other than City; or (d) is considered a "public record" under the California Public Records Act (i.e., California Government Code sections 6250 *et. seq.*).
21. Acknowledgment of City Support. Contractor shall ensure, and require Subcontractors to ensure, acknowledgement of the City's financial support in all materials prepared pursuant to this Agreement including, without limitation, brochures, newsletters, advertising, fact sheets, news releases, and internet web sites. Such acknowledgment shall be prominently displayed on any and all materials. Contractor shall secure the review and approval from City of the content, form, and location of all acknowledgments on any materials, which approval shall not be unreasonably withheld. The following is an example of a credit line that might be used: **"This project is funded in whole or in part with City of San Diego funds."** When any such material expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document does not necessarily reflect the opinion or policy of the City. Contractor shall comply with the provisions of City's Administrative Regulation 95.65 regarding product endorsements. Contractor shall not in any way identify or refer to City as the user or endorser of a product or service without City's prior written approval.
22. General Provisions.
- 22.1 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a California Charter City.
- 22.2 Governing Law. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. In addition, the terms and conditions of this Agreement are subject to SDMC Sections 82.08 and 82.09.
- 22.3 Jurisdiction and Venue. For any dispute, claim, or legal matter related to this Agreement or the performance of this Agreement, the parties shall submit to the personal jurisdiction and venue of any State Court within the County of San Diego, California.
- 22.4 Integrated Agreement. This Agreement contains the entire understanding of the parties. There is no other written or oral understanding between the parties with respect to this Agreement or the Scope of Services. Each party has relied solely on advice from its own attorneys and experts in entering into this Agreement. 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. This Agreement shall not be construed in favor of or against either party by



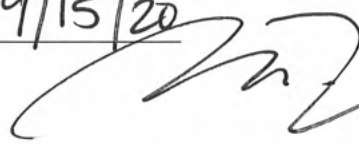
reason of the extent to which each party participated in the drafting of the Agreement.

- 22.5 Non-Assignment. Contractor may not assign the obligations under this Agreement without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 22.6 Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.
- 22.7 Covenants and Conditions. All provisions expressed in this Agreement as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.
- 22.8 Waiver. City's waiver of a breach or default by Contractor shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by City. City's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. Any failure by City to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but City shall at all times have the legal right to require the cure of any breach or default.
- 22.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any party's successor in interest.
- 22.10 Partial Invalidity. 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.
- 22.11 No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between City and Contractor or between City and any other entity or party, or cause City to be responsible in any way for the debts or obligations of Contractor or any other party or entity.

- 22.12 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.
- 22.13 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.
- 22.14 Time is of the Essence. Time is of the essence for each obligation under this Agreement.
- 22.15 Survival. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of performance and termination, expiration or completion of this Agreement.
- 22.16 Unavoidable Delay. If the performance of any act required of 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 City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten days after the beginning of the claimed delay. Any delays in performance of Scope of Services caused by unforeseen events beyond the control of either party shall not entitle Contractor to damages or additional compensation. Such delays may, however, allow for an adjustment or modification in the Scope of Services if such modification is approved in writing
- 22.17 Authority to Contract. 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 which are 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 City with evidence, satisfactory to City, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

CONTRACTOR

Date: 9/15/20  


BY: GASLAMPQUARTER ASSOCIATION  
Name: MICHAEL TRIMBLE  
Title: EXECUTIVE DIRECTOR

Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California  
municipal corporation

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*APPROVED AS TO FORM:*

MARA W. ELLIOTT, City Attorney

BY: \_\_\_\_\_

Name: Katherine A. Malcolm

Title: Deputy City Attorney

**Exhibit A:**  
**Project (Scope of Services)**

The Gaslamp Quarter Association will utilize parking funds to continue and fully execute the supplemental signage program for the Fifth Avenue Nighttime Active Loading Zone, to continue the Gaslamp Quarter Parking Promotional program, to install enhanced pedestrian lighting, continue to develop the Gaslamp Promenade Plan for Fifth Avenue and to repair and replace sidewalks for pedestrian safety.

1. Marketing and Promotions/Programs	\$175,000
a. Promotion of 6 <sup>th</sup> &K and Park it on Market Parking Structures	
b. Digital, Print and Radio Advertising	
c. Street Level Advertising	
d. Program Management	
2. Neighborhood Initiatives and Special Projects	\$523,873
a. Fifth Avenue Nighttime Active Loading Zone	
b. Gaslamp Promenade	
d. Enhanced Pedestrian Lighting	
e. Sidewalk Repair Program	
f. Program Management	

**Total: \$698,873**

**Exhibit B:**  
**Council Policy 100-18**

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**



## Exhibit C

### Conflict of Interest and Procurement Policy for Non-profit 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 and which receive funding from or through the City.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

#### Board Roster

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

#### Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit corporations contracting with the City for which obligates or will result in the expenditure of any TOT/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 the City's procurement of such goods and services including that the selected vendor(s) must have a valid City of San Diego Business Tax Certificate unless otherwise exempted by Federal, State, or local law and except that the threshold amounts shall be as listed below and all quotes or pricing must be obtained in writing.

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

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

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

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than



\$1,000,000 in total, the nonprofit corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

Remedies

A violation of any provision of this policy shall be grounds for termination of the nonprofit 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 nonprofit corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.